

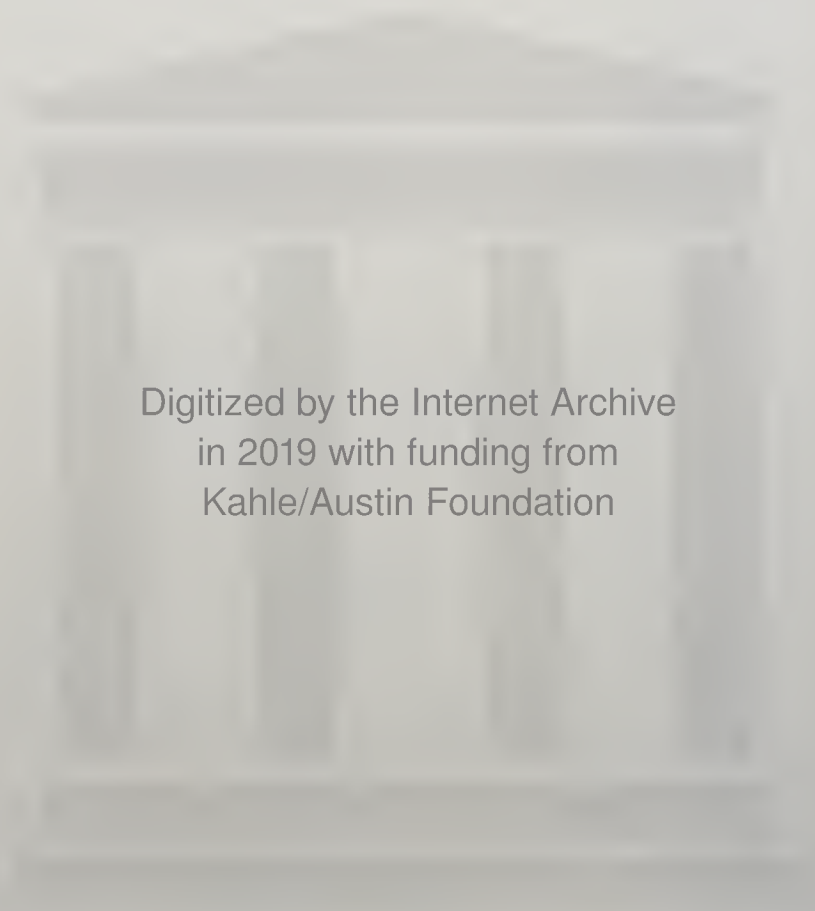
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HISTORICAL RECORDS
OF
AUSTRALIA.



T₅

for T₅ Macmillan



SIR THOMAS DICK LAUDER BART. R. S. J. 24. 25.
OF GRANGE AND FOUNTAINHALL

THE
GREAT FLOODS

OF AUGUST, 1829,

IN THE
PROVINCE OF MORAY AND ADJOINING DISTRICTS.

BY
SIR THOMAS DICK LAUDER, BART.

OF GRANGE AND FOUNTAINHALL, F.R.S.E.,

AUTHOR OF "THE WOLFE OF BADENOCH," "LOCHANDHU," "HIGHLAND RAMBLES," &c., &c.

WITH AN INTRODUCTORY NOTE BY MISS DICK LAUDER.

"The waters prevailed."—Genesis.

THIRD EDITION.

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COMMONWEALTH OF AUSTRALIA

"HISTORICAL RECORDS

OF

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"SERIES I."

"Vol. 13"

GOVERNORS' DESPATCHES TO AND
FROM ENGLAND.

VOLUME XIII.

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1920.

INTRODUCTION.

GOVERNOR DARLING.

THE administration of Ralph Darling was probably the most unpopular of all administrations, whilst the territory of New South Wales remained a crown colony. It forms an interesting historical parallel with that of Governor Bligh. Both administrations formed stormy epochs, yet both were necessary to secure the progress and advancement of the colony, and in both cases the storm was exaggerated by the personality of the administrator. Darling, like Bligh, was in many respects the victim of circumstances; but Darling, like Bligh, was too dogmatic to conciliate his opponents. Darling, like Bligh, was given the spade task of educating the colonists to a new standard. Bligh was instructed to suppress the liquor traffic and to check the military domination, and thus to alter the old system of government; he aroused the bitter antagonism of those affected by the necessary changes. Darling was instructed to develop the new system of government recently introduced, and to educate the colonists to enlarged ideas of civil responsibility; he incurred the antagonism of those who had been demanding changes, but who considered the changes granted were not sufficiently advanced.

At the beginning of the year 1826, the agitation to secure complete legislative control over the colonial finances, and to obtain the concession of trial by jury, was supported by a majority of the colonists. During the year, when the reports of the debates in parliament on the New South Wales bill were received, the agitation received extended support, and the feeling in the colony was almost unanimous in favour of reform. Darling was made cognizant of the agitation by the full reference which was made in the address of welcome* to him on his arrival. The agitation was led by the two brainiest men in the colony, W. C. Wentworth and Robert Wardell. Both were barristers, and Wardell the editor of the *Australian* newspaper, of which he made full use in the struggle for reforms. This struggle was the point of origin for most of the opposition to Darling and his administration.

Ralph Darling was the first governor of New South Wales who was subjected to the unlimited criticism of a free press, criticism

* See page 144, volume XII.

which he appears to have resented personally, as well as officially. The fight between Darling and the press was the most important episode in his government, and the development of this free press must be realised, in order to appreciate the opportunity for criticism which it gave to the opponents of Darling and his representation of the British government at a crucial period.

A printing press had been brought out in the first fleet in 1788, and had been used for the printing of government orders and proclamations by a convict named George Hughes. In the year 1802, George Howe became the printer; and, in the following year, he obtained the permission of Governor King to "collect materials weekly," and, after "being inspected by an officer," to publish them in the form of a weekly newspaper. This was the genesis of the first newspaper, "*The Sydney Gazette and New South Wales Advertiser*," the initial number being issued on the 5th of March, 1803. It was published at the risk and expense of George Howe, until he died in the year 1821, when he was succeeded by his son, Robert Howe. The censorship established by Governor King was fulfilled in practice by the submission of proofs of all matter for publication, in the early years, to the secretary to the governor, and in later years to the colonial secretary. These officers initialled all approved matter.

In the year 1824, W. C. Wentworth and Robert Wardell founded the "*Australian*" newspaper, and published the first number on the 14th of October, without seeking or obtaining any permission from the governor, Sir Thomas Brisbane. Robert Howe, feeling the injustice of an uncensored opposition paper, applied for the removal of any restraint from his paper, the *Gazette*. This request was granted, and the censorship was removed on the 15th of October, 1824, although the paper still continued to bear the sub-heading "Published by Authority." In January, 1825, Sir Thomas Brisbane transmitted to Earl Bathurst a series of the *Australian* newspaper, published during its first three months. At the same time as he withheld any opinion on the articles in the *Australian*, he thought that the removal of the censorship from the *Sydney Gazette* had been more beneficial than otherwise. It must be remembered that the editor of the *Gazette* held a monopoly of all the printing required by government, and, however liberal the editor might feel, it was impolitic for him to take an attitude of entire independence, or to criticise the government.

After examining this first series of the *Australian*, Earl Bathurst expressed the opinion, "that the entire exemption of the publishers from all restraint of the local government must be highly dangerous to a society of so peculiar a description." Therein, Bathurst pointed out the crux of the problem which confronted Governor Darling. The power of the press is admitted, and unbalanced writings have an adverse influence on unbalanced minds. It is probable that, at this period, the colony was unsuited for the introduction of a free press, many social conditions being new and still on trial, and Darling had the misfortune to experience the effects of this premature freedom, and to be compelled to initiate measures of control. The freedom was also inopportune, as it coincided with the beginning of political agitation in the colony.

In May, 1826, nineteen months after the *Australian* was founded, the "*Monitor*" newspaper was established by Edward Smith Hall, and, in April, 1827, eleven months later, the "*Gleaner*" newspaper by L. H. Halloran. The *Gleaner* was short-lived; but the *Monitor* shared with the *Australian* the doubtful honour of opposing almost the entire administration of Governor Darling in the most rabid manner.

Before Darling sailed from England, and when Darling had no personal acquaintance with the conditions in the colony, Earl Bathurst gave him instructions* for the regulation of the press. Bathurst suggested the local adoption of the principle that the printers, publishers and proprietors of all newspapers should be registered, and that the publishers should enter into a bond with two sureties to secure the payment of any fine that might be imposed upon conviction for a blasphemous and seditious libel. Bathurst also suggested that colonial legislation should be passed, forbidding the publication of any newspaper except under an annual license from the governor, such license to be resumable at any time by order of the governor with the advice of the executive council. He further proposed that each issue of a newspaper should be subjected to a stamp duty, the produce of such duty to be applied to the cost of printing public acts, proclamations and orders.

Governor Darling regarded these instructions not as immediate and imperative, but as "given in order to repress any

* See page 16, volume XII.

licentiousness"; for, in May, 1826, he reported* that both the *Gazette* and *Australian* had spoken in favour of the government up to that date, and he considered it injudicious to provoke attack by the imposition of an "insignificant tax." In the same month (May), he ordered the editor of the *Gazette* to omit the sub-heading, "Published by Authority," as the government had no interest or control in the paper, and the use of the phrase might be misleading to the public.

Governor Darling, early in his government, was made aware of the freedom of criticism practised by the colonial press. In January and February, articles† appeared in the *Australian* criticising the archdeacon and the sheriff; other instances‡ of criticism occurred in April, May and June. Darling must have observed the extraordinary want of reserve and dignity, and the great license, with which these articles were written. The editor of the *Monitor*, E. S. Hall, was the first to incur the active displeasure of the governor, who ordered a prosecution on the contents of certain leaders, published in July.§ This prosecution, however, was suspended, when the tone of the articles in succeeding issues was modified. In September, a vicious criticism§ was published in the same paper on certain new land regulations, and Darling forthwith ordered the prosecution of Hall to proceed. This prosecution was abandoned on the advice of the executive council, which, at a meeting on the 6th of October, considered that E. S. Hall had seen the impropriety of his writings. At the same meeting, Governor Darling, for the first time, submitted for the consideration of the council Earl Bathurst's instructions|| for regulating the press. These were discussed by the council, and held over for consideration.

It is evident that Darling was loth to initiate legislation for the control of the press, and was not keen to commence the prosecution of the editors, but desired at first to moderate press criticism by conciliatory methods.¶ On the other hand, it was alleged by the attorney-general, Saxe Bannister, that Darling was afraid of Robert Wardell, and therefore tolerated him to a certain degree.

During the first eleven months of the year 1826, the criticism of the government which appeared in the press was negligible; and

* See page 327, volume XII. † See notes 59 and 106, volume XII.

‡ See note 123, volume XII. § See note 130, volume XII.

|| See page 16, volume XII. ¶ See page 530, volume XII.

the tendency of the articles published was mainly inflammatory, written for a special class largely composed of emancipists. The practice was to criticise some petty wrong, and enlarge it into a grievance of the first magnitude.

The struggle between Darling and the press may be said to have commenced at the time of the "Sudds and Thompson case," at the end of the month of November. But this case was not the cause; it was only an opportune incident, which served as a text for the malicious criticism of the governor as the official representative of the British cabinet, and not of the individual, Ralph Darling. It must be remembered that W. C. Wentworth, Robert Wardell, and E. S. Hall were keen leaders in the agitation to secure a colonial legislative assembly. The draft of the new New South Wales bill was sent to England by the chief justice, Francis Forbes, in October, 1826; this bill dealt the death-blow to the immediate realisation of the hopes of the agitators. It is probable that the leaders of the movement were aware of the main provisions of the new bill, and that this knowledge was the secret and principal cause of the malicious criticism of the figure-head of the British cabinet.

Darling, the figure-head, was unfortunate in being the victim of circumstances; but Darling, the individual, does not merit three-fourths of the odium cast on his administration, although he was responsible for an increased vindictiveness caused by his somewhat narrow disposition and the adulation of his supporters, which he must have tolerated, in the *Sydney Gazette*.

The case of J. Sudds and P. Thompson would probably have excited little comment, except for the unfortunate death of Sudds, associated with the circumstances of the moment. The facts were briefly as follows:—An idea had become prevalent amongst the lower grades of the military that the lot of an emancipist or expirée, with all the local opportunities of acquiring wealth and comfort, was preferable to the position of a soldier bound for a fixed period of military service. The necessity of serving a term of years as a convict did not neutralize the desire for the alteration in status. Six soldiers had committed various crimes to escape military service, and in April, 1826, two privates had blown off their hands for a similar purpose.* Drastic evils require drastic remedies; and, when Sudds and Thompson were convicted and sentenced to seven years' transportation for a theft, committed in

* See page 756, volume XII.

broad daylight in Market-street, for the avowed purpose of escaping military service, Darling decided to take special action to counteract the continuance of the evil. He commuted the sentence of transportation to seven years in irons in the road gangs, and ordered the prisoners to undergo a ceremony of military degradation. The military punishment was carried out on the 22nd of November. The two prisoners were marched from the gaol to the barracks, stripped of their uniform in the presence of the assembled regiment, and dressed in felons' clothing; an iron collar was placed on their necks, fitted with chains attached to the leg-irons and a spike projecting before and behind; the prisoners were then drummed out of barracks to the tune of the "Rogue's March," and marched back to gaol. Unfortunately Sudds was a dropsical subject, and his death occurred in hospital five days after the military punishment. In the years 1827 and 1835,* Governor Darling was held entirely free from blame in inflicting these punishments by Earl Bathurst and a select committee of the house of commons respectively, although Bathurst questioned the technical legality of the alteration of the civil sentence. It is clear that, gauged by the standards of the period, the punishments were not excessive.

Prior to the death of Sudds, the military punishment was reported in the *Australian* newspaper† of the 25th of November. The sentence was approved by the editor, as it was "requisite both that extraordinary ceremonies should be observed in discarding them from the regiment, and that somewhat of unusual severity in their sentence should be ordered," and it was stated that no better means of punishment "could have been adopted than their being ordered to be worked in an iron gang." Robert Wardell soon altered his opinions, and in the issues dated 29th November and 2nd December,‡ the sentence of the court of quarter sessions was considered "erroneous," the commutation of the sentence "irregular," and the use of irons "indefensible," although it was admitted that the irons, after examination by the editor, were "exceedingly light and not calculated to inflict torture." These chains were examined by the executive council, and found to weigh 13 lb. 12 oz., their dimensions being ample, and "there was nothing in their construction to prevent a man's lying in any posture."

* See page 440 in this volume, and page xvi, volume XII.

† See page 722, volume XII.

‡ See pages 717 and 724, volume XII, and note 26 in this volume.

The punishments of Sudds and Thompson were subsequently referred to as the "torture" cases; were used by W. C. Wentworth for his proposed impeachment of Governor Darling; were constantly and maliciously revived in criticism of Darling, and were not allowed to pass from active public notice until the year 1835, when the select committee of the house of commons exonerated Darling from all blame. Yet Earl Bathurst at once approved them; and Robert Wardell, perhaps Darling's most bitter opponent, commended them at first, and, even after he had altered his opinion, he admitted the charge of "torture" was untenable.

The probable motive, which caused the change in Robert Wardell's opinions, was the realisation of the opportunity for agitating the calling of a public meeting to prepare a petition to parliament in reference to the New South Wales bill, which was to be discussed in the beginning of the next year, 1827. A meeting had been proposed, but abandoned for want of general approval; and, as was pointed out* by the chief justice, "it was hoped that the case of Sudds might be used as a war cry to bring the people together, and, if that should fail, it would at any rate serve as the ground of some complaint, some pretext for popular checks upon the abuses of power in New South Wales . . . it is a political juggle." The editors of both the *Australian* and *Monitor* newspapers made full and prompt use of the incident. Their immediate object was probably achieved by the success of the meeting on the 26th of January, 1827, when the petition† was adopted for presentation to the King and both houses of parliament.

When the adverse criticism commenced, Darling immediately consulted with the chief justice, F. Forbes, as to the propriety of enacting legislation for the restraint of the press, in accordance with Earl Bathurst's instructions. But Darling was then (4th December) of opinion,‡ and in this opinion he was supported by Forbes, "that any restraint . . . should be effected through the means of Parliament rather than by the local Government, as whatever may be done in that respect will to a certainty excite feelings of general dissatisfaction here." At the same time, Darling forbore to commence the prosecution of E. S. Hall, whose criticism was particularly violent, in order that the secretary of state should not be embarrassed by petitions when he was carrying the New South Wales bill through parliament. Darling was also

* See page 764, volume XII. † See page 51. ‡ See page 725, volume XII.

advised by Forbes* “that the proceedings of the papers should be noticed as little as possible for a certain time, in order that they might commit themselves in such a manner, as would fully satisfy Parliament of the necessity of imposing more than the ordinary restrictions on the press.” The opinions of Forbes were strengthened subsequently by the decision† of the judges at Bombay, which was adverse to local legislation for regulating the press.

The manner of writing adopted by the press was undoubtedly provocative, as, for example, an article‡ written in the *Monitor* newspaper on the 3rd of February; and it is probable that the editors, Robert Wardell and E. S. Hall, were determined to force an issue with the government. In December and January, articles§ appeared in the *Australian* strongly and maliciously condemning the proposal to pay the stipends of the clergy from the colonial funds, and the appointment of F. Allman as superintendent of police at Newcastle. In March, the government was arraigned on twenty-four distinct charges|| in the *Monitor*, and in the same paper charges¶ of maladministration were alleged.

While these criticisms were being made, the position of the government was complicated by a statement by judge Stephen in court on the legal rights of convicts, which was reported** in the *Monitor*. Governor Darling wrote to Stephen to know if he was correctly reported††; but this request was resented by the judge, who most unjustifiably supplied Wardell directly or indirectly with the details of the governor's action. Thereupon, a lengthy adverse criticism‡‡ on the governor appeared in the *Australian*. Such conduct in a judge of the supreme court cannot be condoned, and Darling justly resented it. At the end of March, an action,§§ brought by Saxe Bannister against Robert Wardell, was tried in the supreme court, and a verdict was entered for the defendant on somewhat technical grounds.

Governor Darling thereupon proposed immediate legislation for the restraint of the press. Two bills||| were drafted, one for the licensing and general regulation of newspapers, and a second for the imposition of a stamp duty on each issue. These bills were strictly in accord with the instructions¶¶ given by Earl Bathurst to Darling in July, 1825. It was, however, necessary, under the

* See page 278. † See note 24. ‡ See note 25. § See note 26.

|| See page 180. ¶ See note 44. ** See note 49. †† See page 208 *et seq.*

‡‡ See note 57. §§ See note 71. ||| See page 285 and note 70.

¶¶ See page 16, volume XII.

provisions of the New South Wales act, that the chief justice should certify that a statute was not repugnant to the laws of England before such statute was submitted to and passed by the legislative council, which, in 1827, consisted of seven members, the lieutenant-governor, the chief justice, the archdeacon, the colonial secretary, John Macarthur, Robert Campbell, senior, and Charles Throsby.

On submission of the first bill, the chief justice, F. Forbes, refused to certify to the first six clauses,* which provided for an annual license for newspapers, resumable at any time by the governor with the advice of the executive council. The remaining twenty-two clauses† were certified and submitted to the legislative council on the 24th of April; they were passed on the following day, and came into operation on the 1st of May.

The second bill,‡ which provided for the imposition of a stamp duty on each issue of a newspaper, was submitted to and certified by Francis Forbes on the 16th of April, with a blank left for the amount of the duty. The bill was laid before the council on the 24th of April, the chief justice being present, and read by the clerk, who stated that the sum of fourpence as the proposed duty was marked in pencil in the margin; to this, the chief justice then made no objection. On the 2nd of May, the council continued the discussion of the bill, the chief justice and Robert Campbell being absent. A. Macleay, the colonial secretary, moved that the duty should be fourpence. The archdeacon proposed an amendment that it should be sixpence. After discussion, the amendment was negatived, and the original motion‡ carried. The council adjourned to the next day, and the clerk was desired to summon the chief justice and Robert Campbell to attend. On the 3rd of May, the council met, and Macleay stated that "the chief justice was obliged to go to court; but that he was happy to say he had seen the chief justice, who stated to him he had no objection to the bill." The statute was then passed, and was to come into operation on the 1st of June. It was published in the *Sydney Gazette*, dated 4th May, 1827.

The publication of this statute caused consternation amongst those interested in the press. The principles were strictly according to Earl Bathurst's instructions, and the duty was fixed at the

* See page 285. † See note 70.

‡ John Macarthur in a private conversation considered that a duty of one shilling was preferable.

same amount as the English duty. But its incidence in the colony would have been of greater effect than in England. Robert Howe, the proprietor of the *Sydney Gazette*, stated that, in the event of the duty being exacted, he would have been unable to continue publication, although he had a circulation of two thousand (three issues) weekly. He also stated that the *Monitor*, with a circulation of five hundred (one issue) weekly, and the *Gleaner*, with two hundred (one issue) weekly, "must have died almost *instantly*"; and that the *Australian*, with a circulation of twelve hundred (two issues) weekly, "from its more abundant resources might have survived two or three months, but not longer." Although these were *ex parte* statements by an interested person, it is clear that the duty must have been almost prohibitive to the colonial newspapers. But it was adopted by the council, and the chief justice made no remarks when he first heard the amount of the proposed duty, and these members must have known the local necessities of the moment. The bill was suggested by Earl Bathurst, drafted by order of Governor Darling, and passed by the legislative council. Beyond using the discretionary power to be inferred in Bathurst's instructions, Darling cannot be charged with the responsibility of the "attempt to gag the press."

The bill was severely criticised in the press. On the 11th of May, the *Monitor* ceased publication as a newspaper, and the editor endeavoured to evade the first act by issuing material similar to that in the newspaper in the form of "The Monitor Magazine" on the 18th and 25th May. The editor of the *Australian* in some way became aware of the fact that the draft of the bill was submitted with blanks to the council. This was unaccountable, as the members and clerk of the council were sworn to secrecy on taking office. Wardell made use of this information, and published in the *Australian* on the 25th of May a lengthy criticism* of the "stamp act," as it was called, alleging that the act was void. On the 28th of May, the governor became aware that the chief justice was then of opinion that the statute was illegal. A somewhat acrimonious correspondence† ensued between the governor and Forbes, in which the latter used arguments similar to those used by Wardell. As Forbes stated that he never had certified, and refused then to certify the bill, Governor Darling had no alternative but to announce by notice, dated 31st May,‡ that the publication of the bill was premature, and all its provisions were suspended.

* See note 88. † See page 377 *et seq.*; page 383 *et seq.* ‡ See page 392.

The course of action adopted by the chief justice was explained in his letters to under secretary Horton, dated 1st and 14th June, 1827. He stated that the council had determined the amount of the duty without due consideration, and alleged that "another purpose was meditated than that which the act itself proposed," namely, "to tax the papers to death and raise upon their ruins a stipendiary paper of government." He considered this illegal, as, under the provisions of the New South Wales act, no tax could be imposed except for a specific purpose, and not with any implied object. Forbes also stated that he did not anticipate the publication of the act in the *Sydney Gazette* on the 4th of May, the day after the council had passed it. When it was published, he considered it illegal; but he did not notify the governor immediately, because he preferred to wait until the bill should be regularly tested in the supreme court, which Robert Wardell had avowed his determination to do, when his opinion would be strengthened, and his responsibility divided by judge Stephen. After mature consideration, he thought it might prevent the embarrassment of government by informing the colonial secretary of his opinion.

Governor Darling was inclined to impute ulterior motives to the chief justice. It is certain that Darling, being a military man, was disinclined to tolerate opposition. Once he had determined on the propriety of carrying out the tentative instructions, received from Earl Bathurst, his military training had taught him to enforce implicit obedience. Opposition to his plan of action only implied to him a conspiracy to defeat his aims. As a military man, he expected compliance; whereas, as a civil governor, he should have sought what he wanted by conciliation and concession. Many of his charges against the chief justice were unjustified; and his intolerance of opposition in others, associated with his narrow-mindedness, led him to take steps which provoked further antagonism.

Still, at the same time, it is impossible to exonerate chief justice Forbes and judge Stephen from the charge of neglecting to protect and assist the governor and his government during the year 1827. The chief justice seemed to raise technical difficulties, when prosecutions were commenced; and both Forbes and Stephen allowed undue license in their courts, which was exercised by the counsel opposed to government.

The more that Governor Darling resented criticism, the more virulent became the comments on his administration. W. C. Wentworth and Robert Wardell, when acting as barristers, were particularly gross in their remarks. Two instances may be quoted. Wentworth acted as counsel* for E. S. Hall, when he was prosecuted for non-delivery to the colonial secretary of the two numbers of *The Monitor Magazine*. Wentworth described the prosecution as "diabolical and damnable," alleged that "*vindictiveness* and *malice*" were at the bottom of the charge, and accused the government of taking advantage of an individual by refusing him trial by jury. Wardell, as counsel for T. H. James in the prosecution of L. H. Halloran for libel, referred to the governor as a *tyrant*, a *monster* and a *scoundrel*. These addresses were duly reported in the press. When such remarks passed unchecked by judge Stephen in open court, it is clear that the position of the governor was intolerable, and the conduct of the judge unjustifiable.

Two prosecutions for libel† were instituted by Darling against Robert Wardell. The first trial took place on the 1st and 3rd of October, 1827. The jury of naval and military officers could not agree on their verdict, and the defendant was discharged. Before the second trial came on, Governor Darling published in November a general order‡ on the departure of the lieutenant-governor, William Stewart. In this order, praise was given to officers who had discountenanced "the individuals who have laboured . . . to degrade and vilify the government"; it was also announced that those who had not protested would be called on to account for their conduct. This was alleged to be a threat to the officers who composed the jury at the second trial. This trial was held on the 22nd of December, and resulted in another disagreement of the jury.

In both these trials, the attorney and solicitor generals, who prosecuted, stated§ that the failure to secure a verdict was due to the action of the two judges; first, that they allowed the defendant undue license, which was denied the prosecution; and, secondly, that the court, in charging the jury, applied the principles of law far too favourably for the defendant, and made observations which had undue weight on the minds of the jury against bringing in a verdict of guilty.

* See note 125. † See note 169. ‡ See page 694. § See page 723.

Six days after this second trial, Wardell, associated with W. C. Wentworth, probably in a spirit of retaliation, moved for a rule to show cause why a criminal information should not be filed against Alexander Macleay, the colonial secretary, for publishing the general order* mentioned above, and a second one* in December with regard to the proceedings of the turf club. The judges, Forbes and Stephen, were now of opinion that the struggle with the governor was proceeding beyond the limits of prudence. The chief justice, therefore, gave the decision of the court that the making of any order on the application be deferred until the ensuing term, as the rule was "calculated to renew discussions and revive feelings, which it were better should be suffered to subside." In March, 1828, the application was again mentioned, and the court decided "that no public benefit would arise from granting the rule, and on this ground we refuse it."

After the conclusion of the second trial of Wardell, in December, the attorney and solicitor generals advised† the governor against initiating any further prosecutions for libel, "whilst the court entertain such sentiments respecting the law of libel as they appear to do at present."

With this decision, the first period of the struggle between Darling and the press may be said to close.

The attacks made on Governor Darling were not confined to the press and the law courts. His opponents expressed their opinions on every occasion possible. Whilst Darling remained hypersensitive to criticism, the episode of the turf club dinner was particularly galling. This dinner was held on the 9th of November, and the chairman, W. C. Wentworth, took advantage of his position, in proposing the health of Sir Thomas Brisbane, to make an invidious comparison‡ between his administration and that of Governor Darling. In his opinion, practically everything was good in the one, and everything bad in the other. Wentworth appears also to have had a sarcastic way of expressing himself. The toast of Governor Darling was then given, and the band played the tune "Over the hills and far away," after the tune "There is nae luck about the house" had been suggested by Wardell. The tune was played without the authority of the stewards, and may have been suggested in a convivial spirit; but there was no justification, considering that Darling was the representative of the King, and also considering the strained relations

* See pages 694 and 646. † See page 724. ‡ See note 146.

extant at the time. When Darling heard the report of the dinner, he withdrew his patronage and resigned his membership. A meeting of the turf club was then held, when only thirteen members were present. The majority were friends and partisans of Wardell and Wentworth, and resolutions* were carried which were decidedly offensive to the governor. Governor Darling thereupon issued a government order,† suspending W. H. Moore from his office of crown solicitor, and advising all officers and persons employed by the government to resign from the turf club.

Such action must have been somewhat drastic; but, at the same time, the community in general supported the governor, for a few months later the turf club was dissolved and a new racing club was formed.

At the beginning of the year 1828, public opinion was swaying in favour of Governor Darling and against his critics. It was probably thought that his opponents were overstepping the bounds of decency, and their criticism was too rabid. Wentworth, Wardell, Hall, and Mackaness, the late sheriff, were all under an eclipse. At the anniversary dinner on the 26th of January, given by emancipists, a class whom Darling had in no way befriended, the toast of W. C. Wentworth was repeatedly rejected, as those present did not wish the harmony disturbed by any party feeling. This probably indicates that the public for the time were weary of the constant friction.

During all this time, Governor Darling was devoting himself to the reorganisation of the departments of his government. Probably no governor gave more personal attention to detail, and he spared himself in no way in his personal endeavours. Darling had acquired his rank in the army more by staff work than by active service. He was an excellent organiser, and developed all the departments on a business basis, although he was inclined to clog the administration by excess of detail in requisitions, forms, etc.

The conclusion of the story of Governor Darling's struggle with the press and an account of his general administration will be found in the introduction to volume XIV.

FREDK. WATSON.

March, 1920.

* See page 641. † See page 646.

DESPATCHES.

HISTORICAL RECORDS

OF

AUSTRALIA.

SERIES I.

ASSIGNMENTS OF CONVICTS.*

1827.

DURING the year 1827, letters, which enclosed the assignments of convicts (not available) *per* the ships named, were written by different officials to Governor Darling, with dates as under:—

Letters transmitting assignments of convicts.

Date of Letter—1827.	Written by.	Ship's Name.	No. of Convicts.
23rd March	R. W. Hay	Guilford	190 Male
28th March	do.	Princess Charlotte	90 Female
13th April	do.	Manlius	176 Male
17th April	do.	Marquis of Hastings	168 „
14th May	do.	Harmony	80 Female
24th May	do.	Champion	128 Male
9th June	do.	Prince Regent	180 „
19th July	do.	John	188 „
16th August	do.	Florentia	172 „
22nd August	do.	Louisa	90 Female
1st November	do.	Hoogley	99 Male
20th November	E. G. Stanley	Asia	100 „

and letters nominating convicts to be sent to Norfolk island as under:—

13th April	R. W. Hay	{ Manlius	7 Male
		{ Guilford	6 „
11th June	do.	Prince Regent	10 „
17th July	do.	John	2 „
16th August	do.	Florentia	No. not mentioned.

EARL BATHURST TO GOVERNOR DARLING.

(A circular despatch per ship Guilford; acknowledged by Governor Darling, 2nd August, 1827.)

Sir, Downing Street, 1st January, 1827.

1 Jan.

From the want of Geographical information, it has been found impossible to complete, with any degree of accuracy, the Maps deposited in this office of the distant Colonies, which belong to this Country. In order as far as may be practicable to

Reports on progress of geographical knowledge.

1827.

1 Jan.

Reports on
progress of
geographical
knowledge.

remedy this inconvenience, I am to request that you will furnish me with a half yearly report of the progress in Geographical and Topographical knowledge, which may be made in the Colony under your Government, which shall contain detailed information on the following points:—

- 1st. Accounts of any Journies of discovery into the interior;
2. Division of Counties or Districts;
3. Construction of Canals and Roads;
4. Longitude and Latitude of the scite chosen for the Establishment of new Villages or Towns;
5. The Course of Rivers;
6. Height of Mountains;

and generally on other subjects connected with the points, which I have already enumerated. I am also to desire that you will accompany your reports with such Maps and Surveys, as may be necessary to their elucidation.

I have, &c.,

BATHURST.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 1, per ship Marquis of Huntly.)

My Lord,

Government House, 1st January, 1827.

I have the honor to forward herewith in obedience to the 8th clause of His Majesty's Instructions to me, dated the 17th of July, 1825, a full transcript of the Minutes of the Proceedings of the Executive Council of this Government for the half year ending the 31st of December, 1826.

I have, &c.,

RA. DARLING.

[Enclosure.]

[Copies of these minutes will be found in a volume in series II.]

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 2, per ship Marquis of Huntly; acknowledged by Viscount Goderich, 5th August, 1827.)

2 Jan.

My Lord,

Government House, 2nd January, 1827.

I have the honor to transmit for your Lordship's consideration the copy of Regulations, under which it is proposed to grant "Tickets of Leave" in future.

Abuses
of former
regulations
re tickets
of leave.

The gross impositions (in many cases, Forgeries), which were practised by the Prisoners in obtaining the Certificates required under the former Regulations, the little regard which the parties in general paid to the correctness of the facts, which they were called on to certify, and above all the situation in which Settlers were placed, living in remote parts of the Country, who refused, from the misconduct of their servants, to furnish them with

certificates, together with the ill use made of this power in some cases by Masters, who possessed good servants and were anxious to retain them, counteracting their endeavours to obtain "Tickets of Leave," pointed out to me the expediency of revising the Regulations.

1827.
2 Jan.

Abuses
of former
regulations
re tickets
of leave.

I can only say that every attention has been paid in the revision to the interests of the Master and the just claims of the servant. Rewards have been held out in several cases as incentives to good conduct, and I have no doubt the tranquility of the Colony will be promoted by the encouragement given to the detection of Offenders.

I beg to add that, previous to the Establishment of these Regulations, a sketch of them was published in the different Papers with a view of eliciting the opinion of the inhabitants, and they were submitted to and fully approved by the Executive Council.

I have, &c.,

RA. DARLING.

[Enclosure.]

GOVERNMENT ORDER.

Tickets of Leave.

Government
order publishing
regulations for
issue of tickets
of leave.

Colonial Secretary's Office, 1st January, 1827.

HIS EXCELLENCY the Governor is pleased to direct the Publication of the following Regulations for granting "Tickets of Leave," and the conduct of men obtaining that Indulgence, and His Excellency requests that the Magistrates and other Persons, charged with carrying this measure into effect, will carefully attend to the several particulars herein required.

1st. Prisoners Transported for any of the following periods will be considered eligible to hold a Ticket of Leave under the stipulations, hereafter specified, vizt.

Transports for seven years:	Having served 4 years with one, or 5 years with two Masters.
„ fourteen years:	Having served 6 years with one, 8 years with two, or 10 years with three Masters.
„ life:	Having served 8 years with one, 10 years with two, or 12 years with three Masters.

2nd. Prisoners will be considered eligible though the number of Masters, whom they have served, may exceed the number above specified, provided it shall clearly appear that their removal from their places was not occasioned by misconduct.

3rd. Prisoners in the immediate employ of Government will be considered eligible to receive Tickets of Leave under these Regulations, the same as those in the service of Individuals. In the event of Government requiring their services after they have received their Tickets of Leave, they will be allowed Wages according to their qualifications during the periods they may be retained.

4th. Any Prisoners, who shall apprehend *two Runaways* having been absent not less than 48 hours from the service of their

1827.
2 Jan.

Government
order publishing
regulations for
issue of tickets
of leave.

Employers, or one *Bushranger*, or person guilty of Felony, or who shall bring to justice a fellow servant, who has robbed his Master, shall be allowed a deduction of 6 months from the above period. And any person, who shall bring to conviction a Receiver of stolen property, shall be allowed a deduction of 12 months from his period of service; the conviction of *two Receivers* shall be equivalent to two years service, and bringing to Justice *three receivers of stolen property* shall qualify a Prisoner immediately to receive a Ticket of Leave.

5th. The period of six months, on account of the services above specified, will be extended in proportion to any greater number of the said description of offenders, who may be apprehended and brought to Justice.

6th. Applications for Tickets of Leave are to be made periodically (once a month) to the Bench, to consist of not less than three Magistrates of the District, in which the applicant is employed; and the Magistrates will notify in their respective Districts the period, which they may fix as most convenient for receiving these applications.

7th. The merits of the respective applicants are to be strictly investigated. When necessary, Reference must be made to the Benches of those Districts, in which the Applicants may have formerly resided.

8th. Should the Master of any Prisoner, applying for a Ticket of Leave, consider the Applicant undeserving the Indulgence, he should state the circumstance in writing to the Bench. A Certificate of good conduct from the Master is not, however, to be considered indispensable to a servant obtaining a Ticket of Leave.

9th. The several Benches will forward once every month to the Principal Superintendent of Convicts in Sydney a list (according to a form, which will be furnished) of the individuals, whom they consider eligible to receive Tickets of Leave. The Superintendent will examine the Registers in his office, and refer, in such cases as may appear necessary, to the Police Office in Sydney, and will forward the Magistrates' Lists with his Report to be submitted to the Governor.

10th. The Colonial Secretary will notify the Governor's decision to the respective Benches, and will forward the Tickets in order to their being registered and distributed to the respective Individuals.

11th. Tickets of Leave, except in the case of meritorious public services, or other special circumstances, will be granted for one District only.

12th. Men holding Tickets of Leave, who shall apprehend two Runaways, or one *Bushranger*, or Person guilty of Felony, or who shall give information, which shall lead to the conviction of a Receiver of stolen property, or of a person harbouring a Prisoner of the Crown, shall have his Ticket of Leave extended to two or more Districts according to the circumstances of the case.

13th. The Benches are authorized to grant passes for any period, not exceeding one month, to any man holding a Ticket of Leave to proceed from one District to another; but no one is to remove from the District, in which he is registered, without the Governor's permission, which will be notified to the Benches of Magistrates immediately concerned. The passes are to express the object, for which they are granted, and are to be returned to the Benches at the expiration of the period, or the indulgence must not be repeated.

14th. All Ticket of Leave men are to be mustered quarterly, that is, between the 1st and 15th of January, April, July, and October in each year, by the Benches of the Districts, in which they reside; and the names of those, who should fail to present themselves at the appointed time, are to be reported to the Colonial Secretary in order to their Tickets being cancelled.

1827.
2 Jan.

Government
order publishing
regulations for
issue of tickets
of leave.

15th. Ticket of Leave Men, who habitually neglect to attend Divine Worship, will be deprived of their Tickets. Those, who reside in the Towns or within five miles of a place affording them an opportunity of performing their religious duties, and shall neglect to attend, are to be reported by the Magistrates or other persons to the Colonial Secretary, when due notice will be taken of their conduct.

16th. Holding a Ticket of Leave for a period of six years will be a recommendation to the Individual's receiving a Conditional Pardon.

By His Excellency's Command.

ALEXANDER MCLEAY.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 3, per ship Marquis of Huntly; acknowledged by Viscount Goderich, 7th July, 1827.)

My Lord.

Government House, 3rd January, 1827.

3 Jan.

I have the honor to transmit to your Lordship, conformably to the Instructions contained in your Lordship's Dispatch of the 22nd of February, 1825, No. 20, a Return of Grants of land, which have been made during the last year 1826. With very few exceptions, the Grantees have recently arrived from England as Settlers; Lieutenant Colonel Cameron, who has proceeded with his Regiment to India, and two or three others had obtained Reserves from Sir Thomas Brisbane, which have now according to the Conditions been converted into Grants.

Transmission
of return of
land grants.

I beg to observe that the applications for land have been extremely numerous; but the Executive Council advised that none but persons arriving from England with authority from your Lordship should receive Grants, until your Lordship's pleasure should be known on the subject of the deviation from the King's Instructions, which I had the honor to submit in my Dispatch, No. 60, of last year.

Temporary
limitation
in issue of
land grants.

This proceeding has no doubt occasioned much discontent amongst the Settlers. But it was obvious, if the Instructions were strictly attended to, that, the country not being surveyed, no one could consistently receive land as the forms prescribed could not be carried into effect. It was, therefore, judged advisable to give Grants only to persons arriving from England, as delay in their case would have been ruinous; while those already settled, being allowed to rent such land as they might require at the rate of Twenty shillings per hundred acres, could not sustain any real injury.

I have, &c.,

RA. DARLING.

[Enclosure.]

A RETURN of all Grants of Land made in New South Wales during the year 1826.

No.	Date.	Number of Acres.	County.	Parish.	To whom Granted.	When taken up.	Conditions under which the Grant is held.	Convicts, if Victualled, and for how long.	Capital Stated.	Nature of Improvements.
1	September 23	2,560			Bannister, Saxe . . . . .				.....
2	October 13	640			Boydell, C.				£500	
3	November 18	2,560			Bowman, James				Live Stock.	
4	October 9	2,560			Campbell, John				£1,500	
5	September 20	2,560			Clay, G. Bertie				£1,266	
6	November 1	560			Close, E. C.				Live Stock.	
7	November 18	620			Cordeaux, William				Live Stock	
8	September 29	2,560			Dunlunty, John				£2,000	
9	November 2	1,920			Driver, Chas.				£2,000	
10	December 23	1,280			Dunlunty, J. W., junr.				£1,266	
11	October 6	2,560			Forbes, Fras, Chief Justice. . . . .				.....
12	September 27	2,560			Marlington, H. H.		No Grants for the Lands Allotted to these Individuals have as yet been made out.		.....
13	October 3	640			Howey, Henry				£3,100	
14	December 27	2,560			Hosking, John				£711/3/0	
15	October 13	2,560			Janison, Thomas.				£2,214	
16	November 24	640			Inches, I. N.				£2,150	
17	December 27	1,920			Kelly, Richard				£1,570	
18	October 13	1,280			Lawless, Francis		To pay a Rent equal to Five per Cent. on the estimated Average Value, and to expend in improvements to the amount of one fourth of such Estimated Value.		.....
19	October 21	640			Liscombe, John			No Convicts assigned to these Individuals are Victualled at the expense of Government.	£2,000	
20	September 22	500			Mills, John.				£550	

[Enclosure]—continued.

A RETURN of all Grants of Land made in New South Wales during the year 1826—continued.

No.	Date.	Number of Acres.	County.	Parish.	To whom Granted.	When taken up.	Conditions under which the Grant is held.	Convicts, if Victualled, and for how long.	Capital Stated.	Nature of Improvements.
21	October 9	640			Mahoney, Michael	No Grants for the Lands Allotted to these Individuals have as yet been made out.	To pay a Rent equal to Five per Cent. on the estimated Average Value, and to expend in improvements to the amount of one fourth of such Estimated Value.	No Convicts assigned to these Individuals are Victualled at the expense of Government.	These Lands have been so recently ordered and occupied that no expenditure of Capital of the nature contemplated in the Conditions under which the Land is held can be stated; in many instances, the Grantees have proceeded to occupy the Land with Horned Cattle and Sheep.	£660
22	November 2 ...	640			Murray, A.					
23	October 30	2,560			Murlock, James					
24	November 20	2,560			Muckle, George					
25	September 30 ...	1,200			Orpen, Samuel					
26	September 30 ...	320			Orpen, D. C.					
27	November 3	2,560			Park, Alexander					
28	October 7	2,560			Ryrie, William					
29	October 7	2,560			Ryrie, James					
30	October 17	560			Rossi, Francis					
31	December 27	2,560			Rankin, Arthur					
32	October 10	3,200			Stewart, Col'l, Lieut't Governor					
33	October 24	1,280			Shairp, William					
34	November 9	2,560			Sadlair, Richard, R. N.					
35	November 20 .. .	640			Scart, John					
36	October 20	2,560			Townshend, George					
37	November 3	560			Walker, Thomas					
38	November 17	560			Wardell, Robert					
									Live Stock.	
									£2,000	
									£2,000	

Colonial Secretary's Office, Sydney, New South Wales,
February 9th, 1827.

ALEX. MCLEAY.

1827.
3 Jan.
Return of
land grants.

1827.
3 Jan.

GOVERNOR DARLING TO COMMISSIONERS OF THE NAVY.
(Despatch per ship Marquis of Huntly.)

Honorable Sirs,

3rd January, 1827.

Transmission
of government
order.

In acknowledging your Letters of the 5th and 10th July last, I have the honor to transmit for the information of your Board the Copy of a Government Order, which I have published with a view of giving effect to the object of your letters, above alluded to.

I have, &c.,

RA. DARLING.

[Enclosure.]

GOVERNMENT ORDER.

Government .
order re
surgeons and
masters of
convict ships.

No. 3.

Colonial Secretary's Office, 3rd January, 1827.

1st. The Commissioners of the Navy having expressed their Desire that the Surgeons of His Majesty's Navy, who are employed on board Convict Ships, should return to England by the first Opportunity after their Arrival in this Colony; It is hereby notified that any Surgeon, neglecting to return Home as directed, will *not be again employed in the Convict Service*, and that the Pay of such Surgeon will cease on the Day the Ship, by which "he might have returned, sails from the Colony."

2d. The Surgeons will be required, in Order to their receiving their Pay, to produce a Certificate to the Navy Board from the Governor "that they have embraced the first Opportunity of returning Home."

3d. As the Conduct of the Masters of Convict Ships has in several Instances been extremely irregular in endeavouring to introduce into the Colony Articles for Sale, contrary to the Charter Party, and to the Prejudice of the established Merchants and Traders, the Commissioners of the Navy, on the Representation of His Excellency, have signified their Determination to co-operate to the utmost to put a Stop to such Practices; And, in Pursuance thereof, have resolved to inflict a severe "Mulet against the Freight of the Marquis of Hastings for the highly improper Conduct of the Master," on his last Voyage to this Colony.

By His Excellency's Command.

ALEXANDER M'LEAY.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 4, per ship Marquis of Huntly; acknowledged by Viscount Goderich, 10th July, 1827.)

4 Jan.

Application
of J. and W.
Macarthur for
land grants.

My Lord,

Government House, 4th January, 1827.

I have been requested by Messrs. James and William McArthur, sons of the Member of the Legislative Council, to forward the accompanying Memorial to Your Lordship, praying that they may receive a Grant of the land, which had been reserved for them by order of Sir Thomas Brisbane.

Their Memorial has been delayed, as I was desirous of complying with the wishes of these Gentlemen, as far as my Instructions permitted, without troubling your Lordship; and I had

intended giving each of them a Grant of 1,410 acres of the land, which they held as a Reserve, as will be seen by the enclosed copy of a Letter, written to them by the public Secretary, and allowing them to purchase the remaining quantity of their respective Reserves. While the correspondence was carrying on, the Executive Council advised that persons, already in possession of land, should not be allowed any further Grant without purchase, until your Lordship's Instructions should be received on the reference, which had been made on the subject of the disposal of the Crown Lands; but that persons, desirous of obtaining Crown Lands, might be allowed to Rent at the rate of Twenty Shillings for one hundred acres. This resolution prevented me carrying into effect what I had proposed in the case of the Messrs. Macarthur; and I, therefore, submit their Memorial to your Lordship's favourable consideration.

I do myself the honor to enclose a Return of the lands, which these Gentlemen are in possession of, as likewise a Return of those held by their father.

I have, &c.

RA. DARLING.

[Enclosure No. 1.]

THE HUMBLE MEMORIAL* OF JAMES AND WILLIAM MACARTHUR, To The Right Honorable The Earl Bathurst, K.G., His Majesty's Principal Secretary of State for the Colonies, etc., etc., etc., Respectfully Sheweth,

Memorial of J. and W. Macarthur to Earl Bathurst soliciting land grants.

That, in the month of August, 1824, Your Lordship's Memorialists applied to His Excellency Sir Thomas Brisbane for an extension of Grants, and for permission to purchase unappropriated Crown Lands; to which application His Excellency was pleased to reply that 5,000 acres should be reserved to them for additional Grants, subject to Your Lordship's approval, and that they might purchase an equal quantity, when land should be for sale. Your Memorialists were accordingly placed in possession of 10,000 acres, and the portion for purchase having been subsequently extended to 4,000 acres each, they at present occupy 13,000 acres.

But, as nearly two years have elapsed and no Instructions have hitherto reached the Colony relative to the 5,000 acres reserved, Your Memorialists are apprehensive the Despatch may have miscarried, which they trust will be considered a sufficient apology for their now trespassing upon Your Lordship's attention.

The claims of Your Memorialists for an extension of Grants are stated in their Memorial to Sir Thomas Brisbane, to the annexed copies of which and of His Excellency's reply they beg most respectfully to refer Your Lordship. Your Memorialists would further submit that they have hitherto only received

* Note 2.

1827.
4 Jan.

Memorial
of J. and W.
Macarthur to
Earl Bathurst
soliciting
land grants.

Grants of 1,150 acres, altho' they are enabled to employ for grazing and agricultural purposes a Capital of not less than £20,000.

Your Lordship is aware that persons, emigrating from England with equal Capital, would receive much larger Grants; and Your Memorialists feel assured that the mere circumstance of having been born in New South Wales* will not preclude them from similar advantages. They venture even to hope that (when united with their education for the express purpose of settling in the Colony and with the pursuits, towards which their attention has been unremittingly devoted) it will be considered as strengthening rather than diminishing their claims.

Again to particularize those pursuits would be a needless intrusion upon Your Lordship; but Your Memorialists may be permitted to observe that it will always be their earnest endeavour, by every means in their power, to promote the general, as well as Agricultural advancement of their Native Land, and to render the Colony by the production of valuable Exports not only prosperous itself, but a source also of prosperity to the Mother Country.

With these objects in view, Your Memorialists respectfully submit their application for additional Grants of land to Your Lordship's favorable consideration, and will ever pray,

Camden,

17th August, 1826.

JAS. MACARTHUR.

WM. MACARTHUR.

[Sub-enclosure A.]

Memorial
of J. and W.
Macarthur
to Sir T.
Brisbane
soliciting
land grants.

THE HUMBLE MEMORIAL OF JAMES AND WILLIAM MACARTHUR,
To His Excellency Sir Thomas Brisbane, K.C.B., etc., etc., etc.,
Respectfully sheweth,

That your Memorialists are Natives of the Colony; that, after completing their education in England, they accompanied their Father on a tour through France and part of Switzerland for the purpose of acquiring information on such branches of the rural economy of those Countries, as might be advantageously practised in New South Wales, particularly the cultivation and general management of the Vine and Olive. That, having collected Cuttings from the most celebrated Vineyards of Burgundy, Champagne, Dauphine and Languedoc, as well as Olive trees of the finest varieties grown upon the shores of the Mediterranean, and many other valuable fruits and plants, Your Memorialists returned to the Colony with their Father in the latter part of the year 1817.

From that time, they have been constantly resident on their Father's property at Camden, devoting their unremitting

* Note 3.

attention under his direction to the care and advancement of the Merino race of Sheep, the propagation and culture of the Olive and Vine, of artificial grasses, and other valuable productions, as well as to the general improvement of the Estate.

1827.
4 Jan.

Memorial
of J. and W.
Macarthur
to Sir T.
Brisbane
soliciting
land grants.

The excellent qualities of the Wool are universally known and appreciated (by no person more than by Your Excellency), and the Right Honorable the Secretary of State for the Colonies has been pleased to declare that all the expectations, which were held out by Mr. Macarthur to His Majesty's Government of future advantage from the introduction into New South Wales of the Merino Sheep, are fully realised. Under these circumstances, it may appear unnecessary to say more on this subject; but, altho' the fleeces of their Father's flock already surpass those of Spain, and in some instances rival the finest Saxon, Your Memorialists cannot forbear to observe that, by a steady prosecution of the judicious system, which he has pointed out to them, and which has already been productive of results so successful, they have strong grounds to hope for still greater improvement.

The progress of the Vine and the Olive, like that of most new undertakings, has been unavoidably slow in the commencement; but Your Memorialists indulge the opinion that it has not been unsuccessful; and they trust in due time, under Your Excellency's patronage, the wine and Oil of Australia may become as justly celebrated as her Wool.

The assurance of Your Excellency's favorable opinion and countenance has ever been a source of sincere gratification; and Your Memorialists are induced to hope they may not be considered intrusive in requesting that Your Excellency will be pleased to order them grants of land, in addition to those they received from Governor Macquarie, which from their confined and peculiar situation are of comparatively small value.

Your Memorialists will be enabled to employ Capitals, considerably above the highest amount mentioned in the 3rd Report of Mr. Commissioner Bigge.* They humbly solicit, therefore, to be placed on an equal footing with other Colonists of respectability. Your Memorialists beg further to request that Your Excellency will cause to be annexed to the grants, you may be pleased to order them, reserves for purchase on the largest scale and on the terms and conditions, which have been determined upon by Your Excellency for the sale of lands in the Interior, in conformity to the Instructions of His Majesty's Government on that subject. And Your Memorialists will ever pray,

Camden,

21st August, 1824.

JAS. MACARTHUR.

WM. MACARTHUR.

* Note 4.

1827.
4 Jan.

[Sub-enclosure B.]

MAJOR OVENS TO MESSRS. J. AND W. MACARTHUR.

Gentlemen, Private Secretary's Office, 1st September, 1824.

Land to be
reserved for
J. and W.
Macarthur.

In obedience to Instructions from His Excellency the Governor, I do myself the honor to reply to your Memorial of date, the 21st Ult., and to acquaint you that the Surveyor General will be directed to reserve for the Crown 5,000 acres of land in any part of the Country, where it is to be located, and where you may please to select it, but must wait the decision of Earl Bathurst, to whom reference has been made on the general principle of the present, as well as various other similar applications for increase of grants, before he can convert it into a grant.

His Excellency, however, sees no objection to your making application for the purchase of that quantity, when land is for sale.

I have, &c.,

J. OVENS, Private Secretary.

[Enclosure No. 2.]

COLONIAL SECRETARY MACLEAY TO MR. JAMES MACARTHUR.

Sir, Colonial Secretary's Office, 20th September, 1826.

Land grants
proposed.

I am directed by the Governor, in reply to your Letter of the 12th Instant, to inform you that His Excellency has not yet forwarded the Memorial of yourself and your Brother, as he is disposed to give each of you immediately an additional Grant of 1,410 acres under the present regulation, so as to complete the Quantity of Land, granted to you respectively, to 2,560 acres; and I enclose two Forms of Application, in order that you and your Brother may fill them up and transmit them to me accordingly.

I have, &c.,

ALEXR. MCLEAY.

[Enclosure No. 3.]

Return of land
held by J. and
W. Macarthur.

RETURN of Lands held by Messrs. James and William Macarthur.

Date.	By whom Granted.	Quantity. Acres.	Name.	Remarks.
July 9th, 1822	Govr. Macquarie..	1,150	Jas. Macarthur.	Grant.
Sept. 1st, 1824	Sir Thos. Brisbane	2,500	Do	Reserve until Lord Bathurst's pleasure is known.
June 10th, 1825	Do do	4,000	Do	Purchase.
July 9th, 1822	Govr. Macquarie..	1,150	Wm. Macarthur	Grant.
Sept. 1st, 1824	Sir T. Brisbane ..	2,500	Do	Reserve.
June 10th, 1825	Do	4,000	Do	Purchase

18 Sept., 1826.

J. OXLEY, Surveyor-Gen'l.

[Enclosure No. 4.]

A RETURN of Lands* held by The Honble. John Macarthur, Esqr.,
by Grant, purchase or reserve.

1827.
4 Jan.Return of land
held by John
Macarthur.

Date.	Number of Acres.	Where Situated.	Grant, purchase, or reserve.	Remarks.
18th Decr., 1805	2,250	Camden	Grant	Secret'y of State's order.
Do	2,750	Do	Do	Do
6th Octr., 1816	850	Parramatta...	Do	Comprises 450 acs. purchased from Individuals.
15th Jany., 1818	75	Do	Do .....	.....
27th May, 1823	4,368	Camden	Do	Given in pay't for 300 Rams. In lieu of land purchased of Individuals at the Seven Hills and Pennant Hills, and surrendered to the Crown.
Do	2,065	Do	Do	}
Do	1,565	Do	Do	
5th Octr., 1825	5,400	Do	Purchase	Secretary of State's order.
Do	5,000	Do	Do	Do

Surveyor-General's Office,
24th Novr., 1826.

JOHN OXLEY, Sr.-General.

UNDER SECRETARY HAY TO GOVERNOR DARLING.†

My dear Sir,

Downing Street, 5 January, 1827.

5 Jan.

The Bearers of this letter, Mr. Henry Gilbert Smith and
Mr. Charles Smith, having been highly recommended to Mr.
Wilmot Horton by a Gentleman of his acquaintance, I beg to
bring their names under your notice with the request that you
will facilitate as much as possible the objects, with which they
are proceeding to New South Wales.

Recommend-
ation in favour
of H. G. and
C. Smith.

I have, &c.,

R. W. HAY.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch per ship Guilford; acknowledged by Governor Darling,
2nd August, 1827.)

Sir,

Downing Street, 6 January, 1827.

6 Jan.

It is my painful duty to communicate to you the melan- Death of H.R.H.
choly intelligence of the Death of His Royal Highness, the Duke of York
Duke of York and Albany. and Albany.

His Royal Highness expired yesterday evening at twenty
minutes past nine in Arlington Street, after a long and afflicting
illness, to the inexpressible grief of The King and of all the
members of the Royal Family.

* Note 5.

† Note 6.

1827.
6 Jan.

Death of H.R.H.
Duke of York
and Albany.

The Death of His Royal Highness is a severe national loss, which will be long and deeply felt by all Ranks of His Majesty's Loyal Subjects, and cannot but be in an especial manner deplored by the whole British Army, whose love and confidence he had obtained by his undeviating attention as Commander in Chief, to whatever could promote their interests, contribute to their comforts, maintain their discipline, and exalt their Military Honor and Renown.

I have, &c.,

BATHURST.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 5, per ship Marquis of Huntly.)

My Lord,

Government House, 6th January, 1827.

Report re
Robert Gunn.

I have the honor to acquaint your Lordship, in reference to your Lordship's Dispatch of the 28th of July last, No. 53, that Robert Gunn appears to be undeserving the lenity proposed to be shown him, having been Guilty of a Robbery and Breach of Trust since his arrival in the Colony.

I have, &c.,

RA. DARLING.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 1, per ship Guilford; acknowledged by Governor Darling, 2nd August, 1827.)

Sir,

Downing Street, 10th Jany., 1827.

10 Jan.

Land grants to
missionary
societies.

I have the honour to acknowledge the receipt of your Dispatch, No. 37 of the 19th of July, 1826, forwarding the Copy of a Letter addressed to you by the Attorney General, with the enclosed Duplicate of a Deed of Trust, signed by Sir Thomas Brisbane in favour of the *Church Missionary Society*; by which a Grant of 10,000 Acres is made to them in aid of their endeavours to improve the Religious and Civil condition of the Aborigines of New South Wales.

Sir Thomas Brisbane, in a dispatch dated the 8th of February, 1825, transmitted a Deed for His Majesty's Approval granting 10,000 Acres to the *London Missionary Society* with a view to a similar object; but I do not find that the Deed, which you have now sent home, has been before transmitted for my consideration.

By the receipt of my Dispatch of the 31st of July, 1825, you will have been apprised of His Majesty's Approbation of the Grant, referred to in Sir Thomas Brisbane's letter before mentioned; but you will also have observed that a Clause was

directed to be inserted in the Instrument, by which the Land was made over to the Society, stipulating that it should revert to the Crown in the event of the failure of the project, in aid of which it was given; although it would certainly have been more satisfactory if the same precaution had been adopted in this instance, as you have so properly observed with respect to a similar application from the Wesleyan Mission, yet as the second Grant of 10,000 Acres, to which your dispatch refers, appears to have been finally agreed to by your Predecessor, I am not disposed to object to the measure, provided the same condition in regard to the reversion of the Land to the Crown is introduced into the Deed. And I beg to inform you that I shall be happy to afford to the Wesleyan Mission the same opportunity of exerting themselves towards the attainment of so laudable an object, so soon as its success shall have been established in the two former instances.

1827.
10 Jan.

Condition re
reversion of
grant to the
crown.

I have, &c.,

BATHURST.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 6, per ship Marquis of Huntly; acknowledged by Viscount Goderich, 10th July, 1827.)

My Lord, Government House, 10th January, 1827.

I have received a representation from Mr. Justice Stephen on the subject of his salary as Assistant Judge during the period he acted under Sir Thomas Brisbane's appointment, in consequence of the indisposition of the Chief Justice.

Salary of
Justice Stephen
when acting as
chief justice.

Your Lordship was pleased, in your Dispatch of the 26th of April last, No. 34, to sanction the arrangement, which had been reported by Sir Thomas Brisbane, according to which Mr. Stephen's salary as Commissioner of the Courts of Request and Chairman of the Quarter Sessions was to be made up to £1,200 a year. Mr. Stephen has assured me that he was not consulted with respect to this arrangement, but on the contrary understood it to be Sir Thomas Brisbane's intention to leave the question of his remuneration to your Lordship.

When it is considered that Mr. Stephen was obliged to relinquish his private practice, and that the equivalent, which he would receive under the proposed arrangement, would amount to only £200 a year, while he would run the risk of losing his clients by the temporary abandonment of his practice in the Courts, I am induced to submit to your Lordship that Mr. Stephen's salary, during the time he acted, which did not exceed a few months,

1827.
10 Jan.

may be made up to £1,500 a year, the sum he at present receives, and which I have taken the liberty to authorize, subject to your Lordship's decision.

I have, &c.,

RA. DARLING.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Guilford; acknowledged by Governor Darling, 2nd August, 1827.)

11 Jan.

Sir,

Downing Street, 11th Janry., 1827.

Transmission of
astronomical
papers.

Lord Bathurst having received from the Astronomical Society of London the second part of the second Volume of their Memoirs, together with their general Catalogue of the principal fixed Stars, I am directed by his Lordship to forward these Papers to you for the use of the Observatory at Parramatta.

I am, &c.,

ROBT. W. HAY.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 7, per ship Marquis of Huntly; acknowledged by Viscount Goderich, 10th July, 1827.)

My Lord,

Government House, 11th January, 1827.

Appointment of
J. Holland as
commissioner
of court of
request.

I have the honor to acknowledge the receipt of your Lordship's Dispatch, dated 31st of August last, No. 63, signifying, as Dr. Douglass had been appointed Commissioner of the Court of Requests, that Mr. Holland was to replace him as Clerk of the Legislative Council. I beg to observe in consequence that Dr. Douglass's appointment to the Court of Requests was merely temporary, being connected with the arrangement, which became necessary in consequence of the Chief Justice's ill health, and he resumed his duty as Clerk of the Council at the expiration of Mr. Forbes's Leave of absence. Under this circumstance, I have appointed Mr. Holland to succeed Mr. Justice Stephen as Commissioner of the Court of Requests, understanding it to have been your Lordship's intention that he should hold either that situation or the Clerkship of the Council, and he having assured me that his employment as Clerk of the Council had never been intimated to him in England, and further he would have led me to believe that he would not have accepted that employment.

Despatches
not received.

I beg to observe that your Lordship's Dispatch of the 2nd of April last has not reached me, either in Original or Duplicate, though both sets of the Despatches of that period with the exception of the above (which I suppose to have been numbered 25) and No. 27* have been received.

I have, &c.,

RA. DARLING.

* Note 7.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 2. per ship Guilford; acknowledged by Governor Darling, 2nd August, 1827.)

1827.
18 Jan.

Sir,

Downing Street, 18th Jany., 1827.

I transmit to you enclosed the Copy of a Memorial, which has been addressed to me by Mr. Robt. Crawford, complaining of the reduction which has been made in his Salary in consequence of the Arrangements, which you have introduced in the Office of the Colonial Secretary for the remuneration of the several Classes of persons, employed in that Department. Those arrangements, as reported in your dispatch of the 20th July, 1826, appearing to be very judicious and proper, I request that you will inform Mr. Crawford that I do not see any cause for interfering in his case; and you will take the same opportunity of acquainting him that any communication, which he might think proper in future to address to His Majesty's Government, should in the first instance be forwarded to the Governor* for the purpose of being transmitted to England by him in the usual manner.

Application of
R. Crawford
re his salary.

I have, &c..

BATHURST.

[Enclosure.]

[This was a copy of the letter dated 26th July, 1826; see page 552, volume XII.]

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 3, per ship Guilford; acknowledged by Governor Darling, 22nd October, 1827.)

Sir,

Downing Street, 18th Janry., 1827.

I have had the honour to receive your Dispatch No. 36 of the 18th of July, transmitting, in reference to Sir Thos. Brisbane's dispatch of the 8th of February, 1825, the Copy of a Letter from the Surveyor General, and likewise of one from the Attorney General, on the subject of the Land† at Parramatta, claimed by the late Governor Bligh's Heirs.

Correspondence
re land grant at
Parramatta to
Governor Bligh.

The enclosed correspondence, which has taken place between this Department and Mr. Richard Bligh on behalf of the representatives of the Admiral, respecting this claim, will fully explain to you the view which His Majesty's Government have taken of the case. The family of Admiral Bligh, as you will perceive, have waived all claim to the land in question on the ground of Right. Under these circumstances, there can be no Intention on their part to try the legality of the Grant, as apprehended by the Surveyor General; and, should they be so inclined, there can be no doubt but that the decision would be in favour of the

1827.
18 Jan.

Correspondence
re land grant at
Parramatta to
Governor Bligh.

Crown. I do not deem it necessary, therefore, to pursue any other measures for securing possession of the Land than those which have been already adopted*; although should it appear that any actual expenditure has taken place on the Land during the permitted occupaney of it by the family of Admiral Bligh (and you will apprise me as early as possible whether this be the case and, if so, to what amount) His Majesty's Government will then have the opportunity of calling upon the Parties to return the original Deed, by which the Land was granted by Governor King, as a condition of making to the Bligh Family any compensation upon the principle, laid down in Mr. Hay's letter of the 16th Sept., 1825.

I have, &c.,

BATHURST.

[Enclosure No. 1.]

MR. RICHARD BLIGH TO EARL BATHURST.

My Lord,

Linecoln's Inn, 6 July, 1825.

On the 10th of Augt., 1806, Philip King, Governor of New South Wales, by an instrument reciting his authority and instructions under the sign manual, dated the 25th April, 1786, and the 26th Augt., 1789, granted to the late Adm'l Willm. Bligh 105 acres in the Paramatta district in the ordinary form of the grants, made at that period of lands in New South Wales. The grant, it is to be presumed, was with others of that date noticed in the returns to Government, and the estate was enjoyed *without objection or interruption* from the date of the grant to the year 1815. At that period, Govr. MeQuarrie represented to your Lordship that the land in question was wanted for the use of Government, and, suggesting that the grant was contrary to instructions (till then unheard of), recommended that Adml. Bligh should be required to relinquish the grant on having an equivalent of lands elsewhere in the Colony. In consequence of this representation, Mr. Goulburn, by your Lordship's direction, wrote to Adm'l Bligh, stating the purport of Govr. Macquarrie's letter, and concluding with a notice that your Lordship had "sanctioned the resumption (of the land in question) as recommended by Govr. MeQuarrie."

Adml. Bligh, by his answer to this letter, stated his willingness to concur in the views and measures of your Lordship for the benefit of the Colony, on condition that the compensation proposed by Govr. MeQuarrie should be fulfilled.

Admiral Bligh died unexpectedly in 1817, and his affairs were not settled until some years after his death.

On behalf of his representatives, I had the honour to address a letter to your Lordship about a year ago on the subject of the proposed compensation, but have not received any satisfactory

* Note 9.

answer to my application. I now beg leave to draw your attention to the claim, and respectfully to ask whether it is the intention of Government to hold possession of the land on the terms of Govr. McQuarrie's recommendation and Adml. Bligh's answer to the letter of Mr. Goulburn, or to insist upon the right of unqualified resumption notwithstanding the tenor of the correspondence under which possession was taken.

1827.
15 Jan.

Correspondence
re land grant at
Parramatta to
Governor Bligh.

I have, &c.,
RICHD. BLIGH.

[Enclosure No. 2.]

UNDER SECRETARY HAY TO MR. RICHARD BLIGH.

Sir, Downing Street, 16 September, 1825.

I am directed by Earl Bathurst to acknowledge the receipt of your letter of the 6th of July last, relative to the claim of the Heirs of the late Admiral Bligh to indemnification for the loss of a Grant of a Tract of 105 Acres of Land, executed to Govr. Bligh in the year 1806, and resumed in the year 1814 by Governor Macquarie on the part of the Crown, and requesting to be informed whether His Majesty's Government intend to resume the Land simply without making any compensation to Admiral Bligh's family, or, whether "according to the recommendation of Governor Macquarie," it is intended to make a Grant of equivalent Lands in some other part of the Colony as an indemnity:

It appears that the Land in question was originally cleared and cultivated at the public expence, and that it continued the property of the Crown until the month of August, 1806, when Admiral Bligh arrived in the Colony with a Commission as Governor. He did not, however, immediately enter upon the execution of his Office, his Predecessor Governor King having continued for a short time to retain the command.

Accordingly on the 10th August, 1806, four days after Admiral Bligh's arrival, Governor King executed to him a Grant of this Land under the Public Seal of the Territory.

In this proceeding, there are many unanswerable objections. First, Admiral Bligh had no right to postpone the assumption of the Government for, as soon as his Commission arrived in New South Wales, the Commission of his Predecessor was superseded. Secondly, While Admiral Bligh held the Commission of Governor, he was incompetent to accept a Grant under the Colonial Seal of Land situated in the Colony. Thirdly, It has been asserted that Governor King had resigned his Office* and delivered up Custody of the Public Seal, six months before the arrival of Adml. Bligh. If so, at the time of executing this

* Note 10.

1827.
18 Jan.

Correspondence
re land grant at
Parramatta to
Governor Bligh.

Grant, Governor King had not even the pretence of any authority for making it. Fourthly, the land in question had been cleared and improved at the expence of the Crown, and Governor King had been distinctly prohibited from granting property of that description without the special licence of the Secretary of State, and no such licence had been given in the present case.

For all these reasons, the Grant itself was either actually void in point of law, or was liable to resumption at the pleasure of the Crown; and Lord Bathurst, therefore, in deciding that the original Grant of the Land in question to Admiral Bligh was illegal, cannot consent to give any Indemnity to the family of Admiral Bligh for the loss of property, to which he could not establish either a Legal Title or an equitable claim. Directions will accordingly be given to the Governor of New South Wales to take the proper proceedings in the Colonial Courts for the revocation of the Grant, made to Admiral Bligh. His representatives may, if they think fit so to do, make exceptions there against the proceedings, and may from thence bring their claims to be heard before the Privy Council in England by way of appeal against any Judgement, which the Crown may obtain in the Colony; and I am directed to add that, if the property in dispute is not of sufficient value to give the Parties a right of appeal, there is little doubt but that the Crown would be induced to waive the objection, and give its consent to the admission of the Appeal.

With reference to the concluding sentence of the letter, which Mr. Goulburn addressed to Admiral Bligh on the 11th December, 1815, which you have quoted in your letter, vizt., that Lord Bathurst "had sanctioned the resumption" (of the Land in question), "as recommended by Governor Macquarie," of which words the heirs of Admiral Bligh would now avail themselves as meaning that his Lordship had adopted the recommendation of Governor Macquarie, as well with respect to the Grant of equivalent Lands in compensation for those to be resumed, as of the resumption itself; his Lordship can only consider the meaning of that passage as acceding to the latter part only of Governor Macquarie's recommendation; and, had it been otherwise intended, so long a time would not have elapsed without that equivalent having been granted on the part of the Government as applied for by the opposite parties.

In consideration, however, of the ambiguity of the passage in question, which might have led to the presumption on the part of Admiral Bligh that a full compensation was to be given, his Lordship is disposed to take a liberal view of the subject, and to allow Admiral Bligh's family some compensation, not however as

an equivalent for the Land resumed (as his Lordship cannot for a moment admit that the Heirs of Admiral Bligh have any claim, either in Law or Equity, to the Land in question) but for the money, which they might be able to shew they had expended on the Land during their permitted occupancy of it until the time of its resumption.

This is the only footing, on which a compensation can be given to Admiral Bligh's family; but, unless they are willing upon that understanding to surrender to the Crown such right as they may consider themselves to have in the property, every other arrangement for the adjustment of the claim will be declined; and the case must then be remitted to the Colony with directions to the Governor to adopt the proper legal steps for the revocation of the Grant according to the mode, to which I have before adverted.

I am, &c.,

R. W. HAY.

[Enclosure No. 3.]

MR. RICHARD BIGH TO UNDER SECRETARY HAY.

Sir,

Lincoln's Inn, 7 Decr., 1826.

I have conferred with the parties interested upon the subject of your Letter of the 16th of September, 1825; and, although they are advised that the resumption of the Land, granted to the late Admiral Bligh, was contrary to Law, and also contrary to the opinion of the Law officers of the Crown at that time acting in the Colony, they are disposed to accede to any equitable terms of arrangement, for which purpose, I beg to have the honor of an interview and conference with you, or Mr. Wilmot Horton. Your Letter would have received an earlier answer, if the final determination had not been delayed by the absence of some of the parties interested.

I have, &c.,

RICHD. BIGH.

[Enclosure No. 4.]

MR. RICHARD BIGH TO UNDER SECRETARY HAY.

Sir,

Lincoln's Inn, 4th Janry., 1827.

I beg you will have the goodness to represent to Lord Bathurst that, at this distance of time, it may be difficult or impossible for the Representatives of Admiral Bligh to shew (if the fact were so) what they have expended on the Land, granted to him in 1806. But they respectfully request his Lordship's reconsideration of the case independently of the peculiar view of Expenditure in cultivation. Upon reference to the Registry of the Grant, his Lordship will not fail to perceive that it was made by Sir P. G. King,* in his character of Governor reciting his Powers, and the Grantee is described by the name of

1827.
18 Jan.

Correspondence
re land grant at
Parramatta to
Governor Bligh.

* Note 11.

1827.
18 Jan.

Correspondence
re land grant at
Parramatta to
Governor Bligh.

Wm. Bligh, Esqr., who at the date of the Grant for anything that appears to the contrary might have been in England. It appears, moreover, that the Grant was duly registered in the Colony; and it is to be presumed that the original or Copies of the Registers of Grants were regularly returned to Government. This must have taken place in 1806; and no objection to the Grant was made on the part of Government until the year 1815, when the correspondence took place, which has been the subject of former letters. Under these circumstances, I trust that Lord Bathurst will take that liberal view of the case, which your letter of Sept., 1825, gives reason to hope. The Representatives of Admiral Bligh are disposed to waive the ground of right, and to accept from Government such fair and adequate compensation as they may be pleased to offer.

I have, &c.,

RICHD. BLIGH.

[Enclosure No. 5.]

UNDER SECRETARY HAY TO MR. RICHARD BLIGH.

Sir,

Downing Street, 17th Jany., 1827.

I have received and laid before Earl Bathurst your letter of the 4th Instant, in which you state (with reference to his Lordship's offer to allow the family of Admiral Bligh some compensation for the Money, they might be able to shew they had expended in the Land, claimed by them at Paramatta) that, at this distance of time, it may be difficult or impossible for them to shew what they have expended, and you request his Lordship's re-consideration of the case independently of the peculiar view of expenditure in cultivation, adding that the Representatives of Admiral Bligh are disposed to waive the ground of right, and to accept from Government such fair and adequate compensation as they may be pleased to offer.

Lord Bathurst directs me to acquaint you in answer that, as the family of Admiral Bligh are not prepared to shew that any outlay of Capital has taken place on the Land in question, his Lordship regrets that it will not be in his power (having already stated that no Equivalent can be given for the land itself) to authorize any payment by way of compensation for improvements. Lord Bathurst, however, will communicate with the Governor of the Colony on the subject; and, if it shall appear that any money has been laid out on the property by the late Admiral Bligh, or his Agents or Representatives, his Lordship will, as before stated, be inclined to afford some compensation in proportion to the amount which shall appear to have been so expended.

I am, &c.,

R. W. HAY.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Guilford; acknowledged by Governor Darling.
2nd August, 1827.)1827.
18 Jan.

Sir, Downing Street, 18th Janry., 1827.

With reference to Earl Bathurst's dispatch of the 4th Ultimo, in reply to yours of the 27 July last, requesting that a few practical Surveyors should be sent out to New South Wales to assist Mr. Oxley in carrying into effect a more general survey of the Crown Lands, I am directed by his Lordship to acquaint you that he has appointed Mr. Hallen to be an Assistant Surveyor with the Salary at the rate of Two Hundred Pounds per annum, commencing from the date of his embarkation; and his Lordship trusts that, from the testimony borne by Mr. Telford to the abilities of Mr. Hallen in the enclosed letter, he will prove an useful Servant to the Colonial Government.

Appointment
of Hallen as
assist. surveyor.I have, &c.,
R. W. HAY.

[Enclosure.]

MR. T. TELFORD TO UNDER SECRETARY HAY.

Sir, Abingdon Street, 18th Jany., 1827.

In reply to yours of yesterday, I beg leave to state that I have not had an opportunity of being acquainted with Mr. Hallen's acquirements, but am of opinion that a person, bred as he has been amongst Mechanical operations, and having thereby obtained practical Skill, would be a valuable acquisition in a New Country, where the proper adaptation of Machinery is of the utmost importance.

Testimony
in favour of
Hallen.

This knowledge and experience being the results of many years, whereas Surveying, to an intelligent person acquainted with the general principles, I consider a very simple operation, and, therefore, that Mr. Hallen, who seems an energetic young Man, might perform what you require, and besides be otherwise very useful in a New Country.

I have, &c.,

THOS. TELFORD.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 8, per ship Marquis of Huntly.)

My Lord, Government House, 18th January, 1827.

I have the honor to acquaint your Lordship that, immediately after the receipt of your Dispatch of the 2nd of January, 1826, No. 1. I communicated to Archdeacon Scott your Lordship's Instructions with respect to the Land to be reserved

Reserve for
church and
school at
Cawdor.

1827.
18 Jan.

Reserve for
church and
school at
Cawdor.

Valuation of
buildings by
J. Oxley.

for the Church and School Estates at Cawdor, and I have now the honor to enclose, for your Lordship's information, a copy of a letter, which the Archdeacon addressed to me on the subject.

It appearing by this letter that the Archdeacon was of opinion that 20 acres of land would be sufficient for the above purposes, the Surveyor General was directed to measure off that quantity at the place pointed out, so as to secure the use of the water, which had been abandoned under the former arrangement.

Circumstances have prevented the Surveyor General from carrying the orders, which he received, into effect, until lately; and I have now the honor to forward for your Lordship's information a copy of his Report, by which it will be perceived that the Buildings, etc., at Cawdor are valued at £242, which I understand in the present condition of the premises is a fair valuation.

There having been some intention of making use of the principal building for the accommodation of the Bench of Magistrates, I have deferred making any communication to Mr. McArthur respecting the Sum to be paid, until I could visit the place and judge of its eligibility for the purpose required. The moment it is in my power to do so, I shall bring the matter to a conclusion agreeably to your Lordship's Instructions.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

ARCHDEACON SCOTT TO GOVERNOR DARLING.

Sir,

Parramatta, 25th August, 1826.

Report by
T. H. Scott on
selection of
land for church
and school at
Cawdor.

I have the honor to acknowledge the receipt of your Excellency's letter of the 18th, containing two Extracts from a Dispatch from Earl Bathurst, from the latter of which I am directed to "make a selection of the best spot for the accommodation of the Clergyman and for the erection of a Church and School House," and referring me to His Lordship's Dispatch of the 17th August, 1824.

In obedience to these directions, I have to submit to your Excellency that you will be pleased to order the Surveyor General to measure the proportion, which the 34th Section of the King's Charter of Incorporation states shall be the extent to be reserved in each parish, namely, "Twenty acres," and that they embrace the spring of water, which is situated in the 134 acres, I had selected last year, and also that it be inserted in the general Chart of the Parish of Cawdor in the County of Camden.

If this selection differs from the former, and should require any explanation, I beg to acquaint your Excellency that, as there

is water in these Twenty Acres, and as there is *none* near to the present House and garden at Cawdor, I prefer that which is a *permanent advantage* to the temporary convenience of an old House, which will not last above two Years without great Expense for repairs.

1827.
18 Jan.

Report by
T. H. Scott on
selection of
land for church
and school at
Cawdor.

In conversing with your Excellency upon this subject, you expressed your surprize that, when I had 600 acres from which I could make my selection, I should have taken 134 and give *two* aeres for one in another District, thus buying land, as it were, when there was no necessity.

On this subject, I beg to call your Excellency's attention, as a matter of information, not of interference, since it appears from the first Extract of Lord Bathurst's Dispatch that His Lordship does not consider the faith either of His Majesty's or the Local Government pledged.

Soon after my arrival in May, 1825, the Surveyor General stated it would be necessary to determine the matter in question immediately, as the boundaries and line of a road could not be determined on, until I had made my selection. By the Instructions of Lord Bathurst, dated the 17th of August, 1824, I was to state "Whether such land is desirable for the erection of a Church and School House, and preferable to that on the opposite Bank of the Nepean." I, therefore, requested Sir Thomas Brisbane to order the Surveyor General to attend me; and, as His Excellency had stated to me that the subject had undergone legal investigation, and also that the Attorney General had given his opinion of the Grant made, I requested by a letter of the 7th June to Sir Thomas Brisbane to be furnished with all those Papers. I there found that Sir Thomas Brisbane had entered into a contract with Mr. McArthur for these lands, and had actually received the first instalment. I moreover received from the Surveyor General under his hand a statement that he had been ordered by Sir Thomas Brisbane about five or six weeks preceding, as will appear by the annexed document (A), to measure the land and put Mr. McArthur in possession. I also received a statement of similar import from Mr. James McArthur, a copy of which, marked (B), is also annexed.

With these documents before me, and acting under the Instructions as far as legal points are concerned, as well as fulfilling the object of the Charter, I felt it impossible for me to be the instrument either of causing or urging the local Government to violate its engagements. I selected, according to the instructions of the Charter, "Twenty Acres," as I have done in conjunction with the Land Commissioners in other Parishes.

1827.
18 Jan.

Report by
T. H. Scott on
selection of
land for church
and school at
Cawdor.

There is a House, which I consider would be sufficiently good for a Clergyman during a couple or three years. It had been the residence of the Superintendent of Stock. It stands in enclosed Paddocks, richly manured, and there is a good garden. As these were to be valued and paid for by Mr. McArthur, I proposed that the Corporation should take them at that valuation, because the site would afford an immediate and comfortable residence for a Chaplain, so much required in that neighbourhood. But on this spot there was *no water*, although at the distance of about half a mile, in an uncleared and unfenced part of the land, there was a good spring. It appeared to me that, if I could embrace both points, it would be very desirable; and, therefore, under that persuasion, and I see no reason now to alter my opinion, the "Twenty Acres" were all which could be necessary for a Church School, etc., and that, in proposing an exchange of two acres for one of the 114 acres required to include the spring, the former being in the midst of the Ranges of little value to any one, the latter being a most desirable object to the resident Chaplain, I did and do still consider that I made a very beneficial arrangement for the Church. Moreover, Sir, the 600 acres, which had been reserved, were lying in one corner instead of the most central and convenient parts of the Parish, and within a mile and three quarters of a site for another Parish very desirable for a Church and School on the opposite bank of the Nepean, and in a spot liable to floods.

In giving two acres for one as a relative value, I was guided by the opinion of the Surveyor General, whose experience in these matters of course I considered greater than my own; and I am confirmed in the equity of this opinion by the practise of others and of similar exchanges. Sir, I had another object in view by making this arrangement. Mr. McArthur acquiesced in ceding twenty acres in the Parish of Melrose, part of his property for a Church, etc., and without which accommodation there could not have been a burial ground.

As soon as I had made these arrangements, and before I had time to settle the business *finally*, I informed Sir Thomas Brisbane of it by a Letter, dated the 7th June; and before I received his reply of the 29th June, marked C and annexed, some other business required me to call on His Excellency on Tuesday, the 28th June, in the afternoon, and I then told him of my opinion that I had gone over the Papers of the Attorney General, and saw the question in the same light he did, and also of the Reserve I considered necessary for the Church, etc., which I should communicate to him Officially.

I never saw Sir Thomas Brisbane on any occasion more rejoiced at such a determination; over and over again he repeated to me his approbation and his joy at the determination of the affair. I well recollect walking away with him from Government House to a dinner, to which we were both invited, and frequently he recurred to the subject and expressed his joy at the termination of it.

I addressed Sir Thomas officially on the 2nd of July, and received his reply, dated the 6th July, approving of the reservation of 20 acres and offering to refer the exchange to Earl Bathurst; this is marked D.

I was extremely surprized, after an interval of three weeks, at receiving another letter from His Excellency, dated the 25th of July, which states I acted under wrong impressions; in my reply, I recalled to His Excellency the circumstance, which took place between us at Government House, merely as corroborative of his official opinion; but I did not rely on that expression alone, but on other documents. In his answer, His Excellency is pleased to object to "any loose expressions in conversation," as being his opinion. Sir, I hope for the honor of that distinguished profession, of which Sir Thomas is a member, he will not force me to bring that forward in a more formal shape, and convince the world (to say the least of it) he is under a mistake. I do most solemnly state that he did so express himself, nor can Sir Thomas Brisbane as solemnly affirm to the contrary.

It would appear from the Extract from Lord Bathurst's Despatch, his Lordship has not been put in possession of the whole case.

The only Despatches from hence last year, to which a reply at this time could be received, are those sent by the *Harriet*, and she sailed on the 8th of August. If your Excellency will have the goodness to refer to the Surveyor General, he will furnish you with a string of answers on this subject, subsequent to the above date, which will corroborate my statement and also a copy of the Grant, made by Sir Thomas Brisbane, of the Land under the Seal of the Colony, dated the 5th of October, two months after the dispatch of the *Harriet*; nor did my correspondence terminate with Sir Thomas Brisbane until the 25th of August. I also beg of your Excellency to call on the Attorney General to furnish you with the Papers and a copy of his opinion, which Sir Thomas Brisbane directed him to send me, and these several documents I most respectfully request of your Excellency to transmit to Earl Bathurst together with a copy of this Letter and its appendices.

I have, &c.,

T. H. SCOTT.

1827.
18 Jan.

Report by
T. H. Scott on
selection of
land for church
and school at
Cawdor.

1827.
18 Jan.

Report by
J. Oxley *re*
grants to John
Macarthur.

[Sub-enclosure marked A.]

QUERIES ANSWERED BY SURVEYOR-GENERAL OXLEY.

CAN you point out any land reserved in a Grant, made by Government to Mr. John McArthur, of 600 acres, being part of 10,700, as stated in Earl Bathurst's Despatch, dated 17th August, 1824?

There were sixteen hundred acres reserved originally for Church, School and Town Lands on the Nepean River, part of a Government reserve at that time of 10,700 acres. It was afterwards considered that 1,600 acres were too much, and that the actual reserve should be confined to 600 acres, being the quantity usually assigned for Church and School purposes. The boundaries of these six hundred were never marked.

Had you received any orders, and what, from His Excellency the Governor to put Mr. McArthur in possession of any of the above mentioned land?

I never received any orders, until about five or six weeks ago, when I was directed to make the Grants upon certain tenures, which were acceded to by Mr. McArthur.

Do the Instructions to make out the Grants and tenures mention any reference to the reserve of 600 acres of land?

No, they do not; but the Grants have not yet passed the Seal. I only waited for the valuation of the buildings and fences at Cawdor being completed.

J. OXLEY, S.-G.

4th June, 1825.

[Sub-enclosure marked B.]

STATEMENT BY MR. JAMES MACARTHUR.

Statement by
John Macarthur
re negotiations
for land at
Cawdor.

IN the latter end of the year 1822, an order arrived from Lord Bathurst to put my father in possession of five thousand Acres of Land adjoining his original Grants in the County of Camden, in fulfilment of a promise made to him by my Lord Camden when Secretary of State. The Order was not carried into effect; and, upon a representation made to Lord Bathurst to that purport, fresh instructions arrived in the commencement of 1824, ordering my Father to be placed in possession of 10,700 acres of land, known as the Government Reserve at Cawdor, which included the Grant of 5,000 acres and a further portion of 5,700 acres, which were to be paid for at the rate of 10s. per acre in the manner pointed out by the Commissioner of Enquiry in p. — of his third report, or by a proportionate Quit Rent, in conformity to Instructions at that time recently sent out to the Colonial Government on the subject of Quit Rents. Fresh obstructions arose as to carrying into effect these Instructions, and another representation was made to England by my Father.

On the 1st of May or thereabouts, 1824, His Excellency the Governor saw reasons for executing the last mentioned Orders of Earl Bathurst, and my Father was put in possession of the whole 10,700 acres, of which 5,000 were as a Grant, and 5,700 acres to be paid for at the rate of 10s. per acre. My father consented at the same time to allow Government to remain in possession of the Buildings and Paddocks at Cawdor for the term of one year. About six months after, a letter was written to my father by the Colonial Secretary for the payment of the first instalment, which was accordingly complied with; and it is consequently upon the agreement of paying 10s. per acre for 5,700 acres that my Father now considers himself in possession of the land.

1827.
18 Jan.

Statement by
John Macarthur
re negotiations
for land at
Cawdor.

Within these two months, the Government has given the Surveyor General Orders to make out the Grants according to the foregoing conditions, which are considered by my Father as quite conclusive and binding, he having paid the first instalment upon the purchase.

JAMES MACARTHUR.

[Sub-enclosure marked C.]

SIR THOMAS BRISBANE TO ARCHDEACON SCOTT.

Government House, Parramatta,

Reverend Sir,

29th June, 1825.

In acknowledging the receipt of your letter of the 7th instant on the subject of Mr. McArthur's Grant of 10,700 acres of Land, I beg to observe that, in conformity to instructions from Earl Bathurst, accompanied by a chart of those lands, I put Mr. McArthur in possession accordingly; but it has occurred to me that Earl Bathurst's subsequent Dispatch, No. 30 of last August, copy of which I beg to transmit, has taken the transaction out of my hands entirely and placed it in yours.

Decision to
be made by
T. H. Scott.

I am, therefore, prepared to abide whatever decision you may favor me with, as to the extent of lands required for Ecclesiastical purposes, or I shall be happy to forward any suggestions from you or negotiation with Mr. McArthur; but, as I have merely acted in pursuance of Lord Bathurst's Instructions hitherto in the affair, I should rather prefer declining any other step; and I reconcile this the more readily to myself, Mr. McArthur being in possession of the land and the Dispatch allowing him an appeal against my decision.

I regret that my occupation with public Dispatches to go by the Phoenix should have prevented me hitherto from replying to your letter.

I have, &c.,

THOMAS BRISBANE.

1827.
18 Jan.

[Sub-enclosure marked D.]

SIR THOMAS BRISBANE TO ARCHDEACON SCOTT.

Government House, Parramatta,

Reverend Sir,

6th July, 1825.

Approval of
reserve made by
T. H. Scott.

In reply to your communication, dated the 2nd Instant, which I only received in Sydney this morning, I have to observe that, as you are of opinion that the Reservation of Twenty acres out of the 10,700 desired in Lord Bathurst's dispatch, will be sufficient for public purposes, I can have no objection to closing the transaction, which I consider between the Government at Home and Mr. McArthur, on those terms.

Proposed
exchange to
be referred to
Earl Bathurst.

With respect, however, to the proposed Exchange of Three hundred and eighty acres of public Land for one hundred and sixty acres of Mr. McArthur's, as such a measure does not appear to have been contemplated by my Instructions, I must decline becoming party to that arrangement. At the same time, I shall be ready to transmit any recommendation of yours to Earl Bathurst on that subject.

I have, &c.,

THOMAS BRISBANE.

[Enclosure No. 2.]

SURVEYOR-GENERAL OXLEY TO COLONIAL SECRETARY MACLEAY.

Sir,

Surveyor General's Office, 16th January, 1827.

Report on
valuation of
government
buildings at
Cawdor.

In answer to your letter of the 26th Ultimo respecting the appropriation of Twenty acres of Land at Cawdor to the purposes of the Church and School Establishments, and the Valuation of the Buildings there, and directing me to report thereon for His Excellency's information;

I have the honor to report that I have been at Cawdor, and made a careful survey of the Government Buildings and Enclosures, and herewith transmit a statement of their present value, as also a plan of the several enclosures, and of the twenty acres set apart for the use of the Church and School Corporation.

I have, &c.,

J. OXLEY.

[Enclosure No. 3.]

REPORT on the present State and Value of the Government Buildings at Cawdor.

THE Buildings consist of a large dwelling house, framed and weather boarded, ceiled and plastered. The original small cottage has had two wings added to it with a new roof to the whole. These Buildings were finished in 1819, and according to the most accurate estimate might cost, when new, about £350 (Three hundred and fifty pounds) currency. The work appears to have been originally hastily and badly put together; there is no tie

or security to the Roof, which is 30 feet span. The uprights and frame-work are quite rotten and decayed, and more especially at the back and north sides, so as to render the building very insecure. The shingling is more than half worn, and the whole interior of the building in a state of delapidation. It would in my opinion require a greater sum to put it in repair than to build a new one; and, although the building may in its present state stand for some time, I am of opinion that the materials of the buildings which can be applied to any useful purpose in their present state do not exceed the value of £95 (ninety five pounds) sterling, and that the present value of the materials of the out buildings, consisting principally of a good logged Stable, seventy feet long, and which cost originally £70 (seventy pounds) Currency, is £30 (Thirty pounds) Sterling, the shingling being fully half worn, and the stable generally much out of repair. There are also two or three pig styes, men's sheds, only fit for firing. The fencing is 1,360 rods in extent, its original cost 3s. (currency) per rod; and, being considerably more than one third worn and very indifferently put up, I do not estimate the present value beyond 1s. 6d. per rod (Sterling) amounting to £102 (one hundred and two pounds) sterling; and the stock yard I value at £15 (fifteen pounds) sterling, rather more than two thirds of its original cost. The total amount of the value of the whole Building and fences in their present state is as follows:—

	£	s.	d.
The Dwelling House	95	0	0
Stable and Outbuildings	30	0	0
Fencing, 1,360 rods at 1s. 6d. sterling	102	0	0
Stockyard	15	0	0
	<hr/>		
	242	0	0
	<hr/>		

Surveyor-General's Office,
16th January, 1827.

J. OXLEY.

[Enclosure No. 4.]

[A copy of the map of the government buildings at Cawdor will be found in the volume of charts and plans.]

UNDER SECRETARY HAY TO GOVERNOR DARLING.
(Despatch per ship Guilford; acknowledged by Governor Darling,
2nd August. 1827.)

Sir, Downing Street, 20th Janry., 1827.

20 Jan.

I am directed by Earl Bathurst to transmit to you the inclosed Letter from Mr. Sloper, accompanied by a Memorial

1827.
18 Jan.

Report on
valuation of
government
buildings at
Cawdor.

1827.
20 Jan.

Application
on behalf of
W. Lawson.

from Mr. William Lawson, of Veteran Hall, Paramatta, praying, in consideration of the circumstances which he has therein stated, that he may receive an additional Grant of Land. By the answer which I have returned to Mr. Sloper's Application, you will perceive that Lord Bathurst has declined complying with his request in favour of Mr. Lawson; but I am desired by his Lordship to acquaint you that, provided that you shall consider the application reasonable, and that Mr. Lawson is in every respect deserving of the Indulgence which he solicits, there will be no objection on the part of his Lordship to your complying with his wishes to a limited extent.

I am, &c.,

R. W. HAY.

[Enclosure No. 1.]

MR. JOHN SLOPER TO EARL BATHURST.

My Lord, St. Anne's Hill, Wandsworth Common.

Services and
character of
W. Lawson.

Your Lordship will excuse me, if, in presenting this Memorial from Mr. Lawson, I venture to express a sincere and anxious wish for the exercise of your liberal consideration; and desiring your Lordship's permission to declare that no man in the Colony has been more usefully active in his publick Services to promote the general good of the Colony, or more sincerely devoted in his attachment to His Majesty's Government; and, my Lord, should any unforeseen Emergency arise in the Colony, when that attachment may be brought to the most convincing and satisfactory proof, he will be found one of the foremost to evince his Loyalty and Gratitude in a manner which may be productive of the most salutary results. So high is the Estimation, in which he is held by the Inhabitants, not only from his private virtues, but also from his publick Example, that any mark of approbation conferred on him (and by consequence on his Family of fine young men) by His Majesty's Government will not fail to diffuse the most heart felt satisfaction throughout the Colony.

I have, &c.,

JOHN SLOPER.

[Enclosure No. 2.]

THE MEMORIAL OF WILLIAM LAWSON.

Memorial of
W. Lawson
soliciting
land grant.

To the Right Honble. Earl Bathurst, His Majesty's Secretary of State for the Colonial Department, etc., etc., etc.

THE Humble Memorial of William Lawson of Veteran Hall, Paramatta, late Lieut. in the New South Wales Royal Veteran Company, most respectfully sheweth,

That your Lordship's Memorialist came to the Colony in the Year 1800, an Ensign in the New South Wales Corps, afterwards His Majesty's 102d Regt.; and at his request was subsequently

transferred from thence into the Veteran Company, permanently stationed in the Colony, and continued to hold a Lieutenancy in the same to the period of its reduction.

1827.
20 Jan.

Memorial of
W. Lawson
soliciting
land grant.

That your Lordship's Memorialist has resided Twenty five years in the Colony, and during that period has been invested with different Appointments under its Government, viz. To the Important Situation of Commandant of Newcastle, and also of Bathurst, etc.; the arduous duties, attached to all which stations, he presumes he discharged with a scrupulous regard to the strictest œconomy and to the entire satisfaction of His Excellency Governor Macquarie, who subsequently spontaneously transmitted him a most handsome and flattering testimonial of His Excellency's high approbation, and which your Memorialist has annex'd, and begs to submit to your Lordship's perusal.

On the Reduction of the New South Wales Veteran Company, Your Lordship's Memorialist availed himself of the option given him by His Excellency the Governor, and prefer'd remaining in the Colony to returning to England, and is now a Settler there. He begs to state that he has had a considerable number of Convicts in his employ for the last Twelve Years, and has upwards of Eighty at this moment to the great relief of the Government, as he Victuals and Clothes them at his own expense; to which, he begs to state that he has sustained a Clearing Party of Twenty Convicts for the last three years, paying the Colonial Government for their Labour.

Your Lordship's Memorialist has, by the most unremitting perseverance and industry, reallised a considerable property in the Colony, the annual Profit of which he expends upon it. He has a Flock of Nine Thousand Sheep, Fifteen Hundred Head of Horned Cattle, and Seventy Horses, exclusive of other Property, and has expended upwards of Six Thousand Pounds in the Erection of Buildings, clearing, feneing, etc., on his Estate.

Your Lordship's Memorialist, with all humility, desires it may not be unknown to you that he was the First Person, who explored the Country* to the North and North West of Bathurst Settlement, having marked a practicable Road thro' an intricate Country, which opens to an Extensive and Luxuriant tract of Pasturage Land, which is of the last Importance to the Settlers, who find it in this respect superior Feed for Flocks and Herds, and that subsequently he effected a Communication between the Settlements of Newcastle and Bathurst, by his having discovered a Passage thro' the dividing Range.*

Your Lordship's Memorialist has also been the beneficial medium of reducing the Price of Provisions, more particularly in the Article of Mutton at Sydney, having sent more Sheep into

1827.
20 Jan.

Memorial of
W. Lawson
soliciting
land grant.

that Market than any Individual for the last Four Years; and has, with a view to the improvement of New South Wales Wool, and to establish its Celebrity in the British Market, Imported a quantity of Merino Sheep from England at a great expense.

Your Lordship's Memorialist begs most earnestly to lay before you this unaffected Statement, and to refer your Lordship for every enquiry, as to his Honor, his Public Services in the Colony, his uniform Loyalty, his steady attachment and support to the Government, to the late worthy Governor, Sir Thomas Brisbane, who unhappily, for its future welfare (it might have been said had he not been succeeded in the Government of the Colony by his Excellency, Sir R. Darling*) was but for a short period resident there, and who honor'd your Memorialist with his favor, his respect and approbation, and also to the flattering testimonial, attached to this Memorial, from his most excellent and ever lamented Friend, Governor Macquarie, whose name will ever be associated with its Welfare and Prosperity.

Your Lordship's Memorialist Humbly and respectfully hopes your Lordship will take this very insufficient recital into your liberal consideration, and be pleased to confer upon him such an additional Grant of Land, as will not only have the effect of recognising his past efforts for the Public advantage, but will also become an encouragement to his future and continued exertion for the general benefit of this Interesting Branch of the British Empire, and which will not fail to operate as a powerful and influential Stimulus to similar Enterprise among its Increasing Population, and to advance the Welfare and Prosperity of the Colony.

And Your Lordship's Memorialist will ever Pray, etc., etc., etc.
W. LAWSON.

Veteran Hall,
near Paramatta, New South Wales,
3d June, 1826.

[Enclosure No. 3.]

GOVERNOR MACQUARIE TO LIEUTENANT LAWSON.

Sir, Government House, Bathurst, 21st Decr., 1821.

After my inspection of, and farewell visit to this Settlement, which I had founded only in the year 1815, I should feel I were wanting in Justice to your Merits, were I not to seize this opportunity of acknowledging them. The confidence I reposed in your judgement and discretion on my appointing you to be Commandant and Magistrate of Bathurst in the year 1819 has been fully confirmed and realized by your judicious Arrangements and useful Regulations since that period, and the zeal

Testimonial to
W. Lawson
from Governor
Macquarie.

* Note 13.

vigilance and Economy, which you have manifested in the discharge of every part of your publick duty, both as Commandant and Magistrate of this extensive and important Settlement, fully entitle you to my warmest commendations and best acknowledgements, which I request you will accept accordingly.

I shall not fail to express to my Successor, Sir Thos. Brisbane, my sense of your merits and useful Services, and to recommend you to his favor and protection.

I remain, &c.,

L. MACQUARIE.

[Enclosure No. 4.]

UNDER SECRETARY HAY TO MR. J. SLOPER.

Sir,

Downing Street, 17th Jany., 1827.

I have received the directions of Earl Bathurst to acknowledge the receipt of your letter of the 11th Instant, enclosing a Memorial from Mr. Lawson, praying that he may receive an additional Grant of Land in New South Wales in proportion to the benefit, which he has conferred on the Colony by his past exertions; and I am desired to acquaint you in reply that the application, which you have addressed to his Lordship in favour of Mr. Lawson, together with Mr. Lawson's own Memorial, will be referred to the consideration of the Governor, through whom it ought to have been presented in the first instance, as his Lordship does not feel himself able to decide on the merits of the case without having before him at the same time a Report from the local authorities.

I am, &c.,

R. W. HAY.

1827.
20 Jan.

Testimonial to
W. Lawson
from Governor
Macquarie.

Reference to
governor of
application by
W. Lawson.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 4, per ship Guilford; acknowledged by Governor Darling, 2nd August, 1827.)

Sir,

Downing Street, 21st Jany., 1827.

21 Jan.

By the proceedings of Council, which were transmitted for my information in your dispatch of the 25th of July last, I am informed of the measures, which you adopted for providing for the numerous and pressing demands, which had been made to you on the part of the Settlers for Convict Servants.

Approval of
measures
adopted to
meet demand
for convict
servants.

Under the circumstances of the case, I am satisfied of the propriety of the course, which you have pursued for supplying the deficiency; and, as from the report of the Commissioners whom you directed to proceed to Port Macquarie to enquire into the cases of the Prisoners, who had been sent to that Settlement, a large proportion of them could without inconvenience be withdrawn from that quarter, His Majesty's Government have been happy to find that so ready a mode could be resorted to of

1827.
21 Jan.

Approval of
measures
adopted to
meet demand
for convict
servants.

removing the great inconvenience, which had been so generally experienced in the Colony from the want of Husbandmen, and which, but for the measure to which you had recourse, would have been much more extensively felt. Although I have no reason to believe that the Convicts retained in the hands of Government are more numerous than circumstances require, or that any means have been neglected by you of placing at the disposal of the Settlers as large a number as possible of labouring Servants, yet I think it right to call your earnest attention to a dispatch, which I addressed to Sir Thomas Brisbane on the 31st of May, 1823 (of which I enclose a Copy); on consulting which, you will perceive that it will be your duty to direct that all Convicts, excepting those which it may be considered expedient to retain for the absolute necessities of the publick Service, should be given up to the use of the Colonists.

In approving of that part of the Report of the Commissioners, which suggests that Lists should be sent to the Governor by the Commandant every six months of the Prisoners confined at Port Macquarie, I beg to observe that it would be very desirable that once in every two years visiting Commissioners should be appointed, as in the present case, for the purpose of making a similar report. But, with respect to the Convicts, who may be sent to Norfolk Island, or any other highly Penal Settlement, appointed for the reception of the worst Class of Offenders, I should wish it to be understood that no hopes of any mitigation of their Sentences by a removal from thence, should be held out to them, and none ever granted as the means of supplying the want of Labourers in the Colony; but, if any Convict should ever be withdrawn from Norfolk Island, it should only be after a detention there of ten years, and after a Report of five years of consecutive good account.

I have, &c.,

BATHURST.

[Enclosures.]

[*This despatch, dated 31st May, 1823, will be found on page 87, volume XI.*]

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Guilford; acknowledged by Governor Darling.
2nd August, 1827.)

Sir,

Downing Street, 21st Janry., 1827.

I am directed by Earl Bathurst to transmit to you the inclosed Copy of a Letter from the Secretary of the Treasury, respecting the repayment of the Sum of £50, which was advanced to each of the two Police Officers (George Cornick and Thomas Armsden), who went to New South Wales in the year 1824. In

Repayment of
advances by
G. Cornick and
T. Armsden.

addition to the two Sums mentioned in Mr. Herries' letter, the following sums were subsequently advanced to them on account of their Salaries, vizt.

To George Cornick:—18th March, 1824, £50; 20th May, £60; 17th July, £20—£130.

To Thomas Armsden:—18th March, 1824, £50; 20th May, £60; 17th July, £20—£130.

And I am to request that you will acquaint me whether these Sums have been properly accounted for, and, if not, that you will cause the amount to be credited in the Treasurer's Accounts in the mode suggested by the Lords Commissioners of the Treasury.

I have, &c.,

R. W. HAY.

[Enclosure.]

MR. J. C. HERRIES TO UNDER SECRETARY HAY.

Sir, Treasury Chambers, 17th January, 1827.

With reference to your Letter of the 15th of November, 1823, recommending the advance of £50 each to Mr. George Cornick and Mr. Thomas Armsden, Assistant Superintendents of Convicts, and which it was stated was to be refunded by the Colonial Treasurer upon the arrival of these Men in New South Wales, I have it in command from the Lords Commissioners of His Majesty's Treasury to acquaint you that these Sums so paid never appear to have been repaid to the Agent, by whom it was advanced. My Lords, therefore, desire you will move the Earl Bathurst to call upon the Governor to report whether these Sums were accounted for by these Persons upon the receipt of their Salary; and if not, that they may be called upon to repay the amount into the Colonial Treasury; but My Lords do not think it necessary to direct that the Sums, when paid, should now be remitted to the Agent, but should be credited in the Treasurer's Accounts.

I am, &c.,

J. C. HERRIES.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Guilford; acknowledged by Governor Darling, 2nd August, 1827.)

Sir, Downing Street, 22nd Janry., 1827.

22 Jan.

With reference to your letter of the 28th of July last on the subject of the medical arrangements of your Command, and in which you suggest the employment of an Apothecary, who might without inconvenience be rendered applicable to the Civil as well as Military Service, which would be required of an Officer of that description, I am directed by Earl Bathurst to transmit

Re-arrangement
of medical
service.

1827.
21 Jan.

Repayment of
advances by
G. Cornick and
T. Armsden.

1827.
22 Jan.

Re-arrangement
of medical
service.

to you the inclosed Copy of a letter from the Secretary at War,
by which you will perceive that measures have been taken for
complying with your recommendation. I have, &c.,

R. W. HAY.

[Enclosure.]

VISCOUNT PALMERSTON TO UNDER SECRETARY HAY.

Sir,

War Office, 17 January, 1827.

Sir Herbert Tayler has laid before me your letter of the
18th Ultimo, together with the Copy of the letter therein alluded
to from Lt. General Darling, and I request you will acquaint
Earl Bathurst that I have recommended to The Lords Commis-
sioners of His Majesty's Treasury that a Staff Surgeon should
be appointed for the Service of New South Wales.

I have, &c.,

PALMERSTON.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 9, per ship Marquis of Huntly; acknowledged by
Viscount Goderich, 11th July, 1827.)

26 Jan.

My Lord,

Government House, 26th January, 1827.

Transmission
of papers *re*
claim made by
F. Shortt.

I have the honor to forward a letter from Mr. Shortt
respecting some Land, which he represents he is likely to be
unjustly deprived of at the instance of the Australian Agricul-
tural Company. The accompanying copy of a Report of the
Surveyor General, which I do myself the honor to forward for
your Lordship's information, shews in the most satisfactory
manner that the land was promised to Mr. Shortt (for it appears
he has not yet taken possession of it) under the express condition
that, if required by Government, he was to relinquish it, receiv-
ing an equal quantity elsewhere, so that he has evidently no just
ground of complaint; and, as to his claim on the Australian
Agricultural Company, it is altogether inadmissible.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

[A] MR. FRANCIS SHORTT TO EARL BATHURST.

My Lord, 1st Branch, Hunter's River, 3rd January, 1827.

Statement of
claim to lands
at Port
Stephens by
F. Shortt.

I have the honor herewith to transmit, through the Office
of the Colonial Secretary, copy of a correspondence respecting
certain lands at Port Stephens, claimed by the Australian Agri-
cultural Company, though previously allotted to me and Cap-
tains Cromarty and Moon for efficient services rendered to
Government, before the existence of that Company, whose ser-
vices for their Million acre grant are prospective in the course

of 30 or 40 years, was even contemplated. Great anxiety prevails among many Settlers as to the result of this application to your Lordship, as the decision of the question at issue will put to rest the justice or policy of one Governor abrogating the Acts of his predecessor by the resumption of lands, granted for important and admitted services, to be bestowed upon others whose services are at most purely contingent. I feel no anxiety, though the interests of my family are deeply involved in the decision.

By my letter to the Secretary of the Agricultural Committee of 21st October last, your Lordship will perceive that I submit our respective claims to the final decision of His Majesty's Ministers; and, in order that your Lordship may arrive at a just conclusion, I respectfully solicit consideration of the following circumstances.

1st. The important object of establishing net Fisheries at the three Falls, at the most trifling expence, not only for the supply of the Sydney and other Colonial Markets, but also for exportation, it being found impracticable to use nets in the rivers, the beds of which are everywhere foul and encumbered with trunks and branches of great trees. No such impediments occur at the Falls, which are always fordable at low water and clear of obstructions. No Rivers, hitherto discovered in these colonies, possess such paramount advantages accessible to and overflowed by the Tide; and no persons are more fully conversant than the Agents of the Company of the importance of these Fisheries and of the facilities of erecting water Mills, both over and undershot, at these Falls.

2nd. At no great distance, but on the Company's Grant, Coal of excellent quality has been discovered. Circumstances have prevented my taking a Mineralogical Survey of our Allotments; but, from the appearance of the land and other indications, I have little doubt that valuable mineral may also be discovered on our grounds. In fact, coal is everywhere abundant in the vicinity of Port Stephens. The rocky and barren Islands at the entrance of the Harbour abound in Coal strata.

3rd. Since we were permitted to relinquish our Grants at Hunter's River for the far more valuable farms at Port Stephens, so great has been the influx of Emigrants that every foot of land, worth cultivating on the banks of that river and its subsidiary branches, has been located; and to seek for lands at the distance of 150 miles or more from the Coast, whence water conveyance is impracticable, ridges of almost impassable mountains intervening, annihilates the advantages we had anticipated; and your Lordship is perfectly aware that the value of land in all

1827.
26 Jan.

Statement of
claim to lands
at Port
Stephens by
F. Shortt.

1827.
26 Jan.

Statement of
claim to lands
at Port
Stephens by
F. Shortt.

newly settled Countries is in the direct ratio of its contiguity to navigation. No Grant in fact of equal extent, hitherto discovered, possesses advantages in any degree comparable with those on the Tilliegharee, allotted to us. They are in the centre of the Company's Grant, and it can excite no surprize that that Corporation should desire our expulsion "*per fas vel nefas*."

When I requested of His Excellency Sir Thomas Brisbane the Grants in question, it was my own proposition (and in the official letter acceding to my request my own words are quoted) to accept of other farms equal in quantity and quality, should *Government* for its own purposes require these lands on their being surveyed; and we would have done so with the utmost readiness and cheerfulness, as there were many valuable spots about Port Stephens, which we might have selected, though inferior in many respects to those which might be resumed, for at that time and for long after we had heard nothing of the formation of a Chartered Company; but I certainly never contemplated our farm being claimed to be given to non-resident Shareholders of a Company, or to others who had far less right or rather no right to them for their Services. But, if the shadow of a plea exist for depriving myself and Captain Moon, founded on the conditions I myself proposed, I submit that there can exist none in taking from Mr. Cromarty his land, which, as the subjoined letter will shew, was subsequently granted to him without any condition whatever. The Grant at Hunter's River was made to him in the first instance at my particular request; and, could I have surmized that the difficulties, which have arisen as to the integrity of my Grant and Captain Moon's, would have occurred, it is not to be doubted that, on application to the then local Government, an unconditional Grant would also have been accorded to us.

In offering these remarks to your Lordship, I beg explicitly to state that, if it should appear to your Lordship that injustice has been done to us, General Darling in our minds stands unimpeachable and irreproachable, for it is a just and fair inference to imagine that, before His Excellency gave his decision, he consulted with those, who had longer experience in the local and more minute details of this Colony, *especially in the location of lands*; but, if those, with whom His Excellency may be supposed to have advised, were themselves shareholders in the Company's Stock, however fair and honorable men those Counsellors may be in every other respect, it is expecting too much from human nature to give implicit credit to interested parties for strict impartiality.

I have, &c.,

FRANCIS SHORTT.

[B] COLONIAL SECRETARY GOULBURN TO MR. WILLIAM CROMARTY.
On His Majesty's Service.

1827.
26 Jan.

Sir, Colonial Secretary's Office, 30th April, 1824.

Your Memorial having been submitted to the Governor, I have been honored with his Instructions that your application for 300 acres at Port Stephens or in the Commandry of Newcastle is approved.

Approval of
application
for land by
W. Cromarty.

I am, &c.,

F. GOULBURN.

[Enclosure No. 2.]

[A] SURVEYOR-GENERAL OXLEY TO COLONIAL SECRETARY MACLEAY.

Sir, Surveyor General's Office, 25th January, 1827.

In answer to your Letter of the 23rd instant, transmitting a letter from Mr. Francis Shortt, together with one to Earl Bathurst, and the correspondence to which he alludes directing me to report thereon in order to put His Excellency in possession of the particulars of the case, to which these documents have reference,

Report by
J. Oxley on
claims of
Shortt, Moon,
and Cromarty.

I beg leave to state that my letter of the 17th August last (a Copy of which is enclosed), transmitted with Mr. Shortt's letter to me of the same date, contains all the particulars within my knowledge relative to the claims of Messrs. Shortt, Cromarty and Moon for Land at Port Stephens. The lands of the Australian Agricultural Company were directed to be laid out with as little interference with Private Settlers as possible, and in no part of the Colony could their selection have been made, which so clearly came within the scope of the Instructions.

There were but three Conditional Claimants for Grants at Port Stephens, Messrs. Shortt, Cromarty and Moon; no improvements had been made on the lands, neither was any stock grazing thereon. The lands were in fact unoccupied except by two or three Cedar parties under the direction of Mr. Cromarty. I beg to remark that the sum of 5s. per acre, demanded by Mr. Shortt of the Company for compensation for relinquishing the conditional occupancy, is fully equal to the fee simple of the land. If the Company had not taken their Grants at Port Stephens, these lands would not at Public Sale have produced half the Sum now required.

As respects Mr. Cromarty's individual claim, he has made application in lieu thereof on the south side of Port Stephens; and, so soon as I receive a Map of the land requested, I shall be enabled to answer more fully your Letter of the 26th December Ulto., enclosing a representation from Mr. Cromarty.

I have, &c.,

J. OXLEY, S.-Gl.

1827.
26 Jan.

Report by
J. Oxley on
allocation of
lands at Port
Stephens to
Shortt and
Cromarty.

[B] SURVEYOR-GENERAL OXLEY TO COLONIAL SECRETARY MACLEAY.

Sir, Surveyor General's Office, 17th August, 1826.

I have the honor to enclose for His Excellency's information a letter, addressed to me by Mr. Francis Shortt, relative to certain Grants of land intended to be made to Mr. William Cromarty and himself, which lands they were conditionally permitted to occupy at Port Stephens, stating that the Australian Agricultural Company claimed the same, and requesting a communication from me on the subject.

I beg leave to report that Messrs. Shortt and Cromarty, having obtained permission to cut cedar at Port Stephens, subsequently applied for leave to change the lands ordered them from Hunter's River to Port Stephens; their request was granted subject to the condition that, should Government hereafter require those lands, others should be assigned to them. This condition was to my knowledge annexed in order to prevent the Grants of two individual Settlers interfering with or preventing the lands at Port Stephens being taken by the Agricultural Company, should their selection be made in that quarter; and further, in case the Company's selection should be made elsewhere, that the lands, chosen by Messrs. Shortt and Cromarty, might be open to resumption in case the situation on the Survey was found to be such as would render the possession necessary for the Public Service.

Mr. Shortt presented the Private Secretary's letter authorizing the change of land at my office, requesting me to give him a certificate of possession; but, as I was aware of the circumstances under which such a change had been permitted, the letter of which the enclosed is a copy was addressed to Mr. Shortt by Assistant Surveyor Cavenagh by my directions; from the date of that letter to the present time, I have had no communication from either Mr. Shortt or the Company's Agent on the subject. I, therefore, believed the lands to be abandoned, being entirely ignorant of the fact stated by Mr. Shortt that he had been at considerable expence in the improvement of them, and that he had considered himself as entitled to retain a permanent possession of lands originally held subject to the pleasure of Government.

I have, &c.,

J. OXLEY, Sr.-Gen'l.

[C] SURVEYOR-GENERAL OXLEY TO COLONIAL SECRETARY MACLEAY.

Sir, Surveyor General's Office, 4th December, 1826.

In reference to the Application of Mr. William Cromarty for three hundred acres of land on the south side of Port

Stephens, I beg leave to suggest that, as the Australian Agricultural Company possess the whole north side of this important harbour, it would be advisable that the land, intended for the Town, etc., should be marked out before any Settlers be permitted to take lands on the south side of the Harbour. The country is not adapted for the purpose of ordinary Settlers, but derives its value from the Harbour, on which it borders, the best and most spacious anchorage being on the South side.

1827.
26 Jan.

Land applied
for by
W. Cromarty.

I have, &c.,

J. OXLEY.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 10, per ship Marquis of Huntly; acknowledged by Viscount Goderich, 11th July, 1827.)

My Lord,

Government House, 27th January, 1827.

27 Jan.

In forwarding the accompanying letter from Mr. R. Crawford, late Chief Clerk in the Colonial Secretary's Office, which he has addressed to your Lordship on the subject of his retiring from his Office, I beg to refer your Lordship to my dispatch, marked "Separate," dated 8th September, and No. 80, dated 18th October of last year, in explanation of the circumstances of his case. It is unnecessary for me to point out that the *temporary* resignation of an effective officer is as inadmissible as Mr. Crawford's claim from the circumstance of his being Chief Clerk to the appointment of Assistant Secretary. I have been unwilling to inform Mr. Crawford distinctly that I do not consider him qualified for the situation, though he might have supposed this was the principal reason of his not being appointed, and he might also have known from the representations, he is aware I received, and the communication made to him in consequence, of which he did not think proper to profit, that it was not likely in my situation I should have shown that disregard to Morality, which his preferment would have evinced.

Transmission
of papers
in case of
R. Crawford.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

MR. R. CRAWFORD TO EARL BATHURST.

My Lord, Sydney, New South Wales, 26th January, 1827.

Upon the 26th of July last, I took the liberty of addressing your Lordship on the subject of the reduction of my salary as Principal Clerk in the Office of the Colonial Secretary of

1827.
27 Jan.

Request by
R. Crawford
for redress
of grievances.

New South Wales, under an arrangement of His Excellency the Governor; and I now beg most respectfully to refer your Lordship to that Communication.

Since that period, a Mr. Harrington has been appointed Assistant Colonial Secretary; and I have felt it my duty, under all the circumstances, to tender my resignation of the appointment, which I held pending an appeal to your Lordship, but which His Excellency has been pleased *unconditionally* to accept.

It is now nearly four years since I received the appointment of Principal Clerk; and, during that period, I performed the duties of the situation, not only with assiduity and attention, but I can confidently assert without giving the remotest cause for complaint. It was with no small degree of surprize, therefore, that I, in the first instance, received the intimation of the Governor's intention to reduce my salary; but my mortification may be more easily conceived than expressed, when I subsequently found that, although I was nominated to remain in the Office as Principal Clerk, the actual situation, which I had formerly filled, and the Emoluments, which I had hitherto derived, were to be enjoyed by another under a different appellation.

In the expectation that my appointment and the emoluments to be derived from it were of a permanent nature, I came under engagements and obligations, for the discharge of which I depended upon my Salary, but which I cannot now fulfil without sustaining considerable inconvenience and making a very great sacrifice.

It is not consistent with the usual policy of His Majesty's Government to overlook the claims of its servants, still less without a cause to change their situation for the worse; but, with every respect for the person and government of Governor Darling, I cannot but express my feeling that His Excellency has not, in the present instance, treated me with that consideration, to which, I had every reason to expect, the faithful discharge of my duties and the length of my services entitled me, for if it was considered necessary by the Colonial Government to create the Office of Assistant Secretary, I certainly had the most legitimate claim to the appointment.

I regret that I should have been obliged to trouble your Lordship on the present occasion; but, from a consciousness that I have ever done my duty, I feel that to have acted otherwise than I have done would be compromising not only my present interests, but my future prospects; and I, therefore, now respectfully submit my case to the favourable consideration of your Lordship in the entire confidence that your Lordship will be of

opinion I have not complained without a cause, and that such redress will be afforded me as the circumstances, under which I have been placed, may seem to demand.

1827.
27 Jan.

I have, &c.,

ROBT. CRAWFORD.

[Sub-enclosure No. 1.]

MR. R. CRAWFORD TO COLONIAL SECRETARY MACLEAY.

Sir, Colonial Secretary's Office, 11th July, 1826.

The Governor having been pleased by His late Minute to fix my salary as Chief Clerk of this Office at £360 pr. annum, and as this sum is considerably less than the aggregate of my former salary, Fees and Allowances, I am constrained to request that you will do me the kindness to submit this my application to the favorable consideration of His Excellency.

Request of
R. Crawford
for increase
of salary.

You are aware, I believe, that my fixed salary, exclusive of Fees, was previously £260 pr. annum; only £100, therefore, has been added as equivalent for Fees, which

in 1823	amounted to	£206	9s.	} Average of 3 yrs.	£246	14	8	
in 1824	"	£253			} besides double rations	30	0	0
and in 1825	"	£280	15s.					
Total Fees and Allowances ..					£276	14	8	

proposed to be met by an increased salary of £100 pr. annum.

The late Commissioner of Enquiry, at page 94 of the third part of his Report, recommended "that the Fees, received by the Principal Clerk on mustering the crews of vessels, should be abolished, and that an addition of £200 to his former salary of £60 should be made, exclusive of the other Fees that he receives on giving certificates and Emancipations."

Under Lord Bathurst's Instructions, this arrangement was carried into effect, and the sums of £206 9s., £253, £280 are the amounts of those Fees during the years 1823, 1824, 1825 respectively, which, under the Commissioner's recommendation, adopted by Earl Bathurst, I still continue to derive in addition to the augmented salary of £260.

By His Excellency's late arrangements, my Emoluments, as sanctioned by His Majesty's Secretary of State, are consequently reduced from upwards of £500 Sterling to £360 per annum, and that too at a period, when Sterling money is no longer as formerly at a premium of 15 to 20 per cent.

I have been in this Department nearly five years; during four of which, I have filled the situation of principal Clerk; and I feel assured that it cannot be the intention of the Governor to place me now in a worse situation than formerly.

I have, therefore, to request that you will be pleased to move His Excellency, if it be his desire to substitute fixed salary for

1827.
27 Jan.

that portion of the Fees, which I have thus continued to derive, that he will assign to me such additional Salary as will be in ratio to the Emoluments, which I have been called on to relinquish.

I have, &c.,

ROB. CRAWFORD.

[Sub-enclosure No. 2.]

COLONIAL SECRETARY MACLEAY TO MR. R. CRAWFORD.

Sir, Colonial Secretary's Office, 13th July, 1826.

Refusal of
R. Crawford's
request.

I have received and laid before the Governor your Letter of the 11th instant on the subject of the reduction of your Emoluments as Principal Clerk in this Office; and, in reply, I am directed to acquaint you that His Excellency regrets that the arrangement, which has been made, should subject you to any loss on the score of Emolument, but that, in re-organizing the Office, which circumstances had rendered necessary, it does not appear to the Governor that, in the situation in which you will stand when the arrangement is completed, he could consistently have assigned you a higher salary.

I have, &c.,

ALEX. MCLEAY.

[Sub-enclosure No. 3.]

[This was a copy of the letter from R. Crawford to Earl Bathurst, dated 26th July, 1826; see page 552, volume XII.]

[Sub-enclosure No. 4.]

MR. R. CRAWFORD TO COLONIAL SECRETARY MACLEAY.

Sir, Colonial Secretary's Office, 1st November, 1826.

Resignation of
R. Crawford.

With reference to my letter of the 11th last July, and the recent appointment of Mr. Harrington as Assistant Colonial Secretary, I feel it a duty, I owe not only to myself but to those friends by whose advice I came to this Colony, to tender my resignation of the appointment of Principal Clerk in this Office, pending an appeal on these subjects, which it is my intention to make to His Majesty's Secretary of State for the Colonies, and I beg that you may submit the same to His Excellency the Governor.

I have, &c.,

ROB. CRAWFORD.

[Sub-enclosure No. 5.]

COLONIAL SECRETARY MACLEAY TO MR. R. CRAWFORD.

Sir, Colonial Secretary's Office, 3rd November, 1826.

I have received and communicated to the Governor your Letter of the 1st Instant, tendering your resignation of the

appointment of Principal Clerk of this Office, during an Appeal, which you state it is your intention to make to His Majesty's Secretary of State for the Colonies; and, in reply, I am directed to acquaint you that His Excellency has accepted your resignation, but that you are to consider it unconditional, as it is necessary immediately to provide for the performance of the Duties of the Department, to which you belonged.

1827.
27 Jan.
Acceptance of
resignation.

I have, &c.,

ALEX. MCLEAY.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Marquis of Huntly; acknowledged by under secretary Hay, 11th July, 1827.)

Sir,

Government House, 27th January, 1827.

In transmitting the accompanying letter from Mr. Raymond,* I beg to refer you to that, which I wrote respecting his situation on the 3rd of May last. I am quite satisfied that, with much more prudence than he possesses, his present income (£234 a year) is much too limited for so numerous a family.

I have again referred to your letter of the 14th September, 1825, and, as I am induced to think the allowance I have made to Mr. Raymond is not consistent with the view taken of his case at Home, it is my intention to increase the amount to £400 a year, which, as Mr. Raymond appears to have nothing else to depend on, cannot be considered more than barely sufficient to meet the absolute wants of his family. According to the Estimate in the enclosed letter, which is not unreasonable, the necessities of life being extremely expensive, it appears that £511 a year, exclusive of a House (and a small one would not answer his family), is necessary for the subsistence of his family. I have, however, declined extending his allowance beyond the sum of £400, until I receive authority for so doing. You will, I think, be satisfied on perusing the enclosed letter, which I send in original, that his services would not be available in any situation he is likely to accept. For my own part, I see no alternative. As he has been sent out by the Government, his family must be supported; and it is better that he should receive a competent allowance at once, than that Government should be called on from time to time to pay his debts in order to save him from prison.

Increased
annual
allowance for
J. Raymond.

I have, &c.,

RA. DARLING.

* Note 14.

1827.
27 Jan.

[Enclosure.]

MR. JAMES RAYMOND TO LIEUTENANT-COLONEL DUMARESQ.

Sir,

Parramatta, 25 Jany., 1827.

Request of
J. Raymond
for financial
assistance.

In respectfully soliciting His Excellency's consideration of the circumstances under which my Family are placed, Fourteen in number, to whom Earl Bathurst granted passage to this Colony with an assurance of a situation, suitable to their maintenance as soon as opportunity after our arrival, I beg leave to add that such indulgence was granted by His Majesty's Ministers as compensation for remuneration in consequence of exertion in the public cause, and suffering therefrom.

To set forth any exact sum, requisite for maintenance, would be a presumption I dare not offer; but, in compliance with your desire to that effect, I most humbly state after a probation of nine months in the Colony, during which every economical plan, that could be devised, has been resorted to, I find I cannot procure the actual necessities of Life for my Family, according to the market prices, under two shillings pr. head pr. day, exclusive of lodgings. In making this trial, it will be perceived that not only everything like luxury but many of the essential necessities of life have been dispensed with, a fact I am sure his Excellency's experience will bear me out in.

In now drawing his Excellency's attention to this subject, I am compelled by actual necessity; the small sum I brought with me being expended, and the utter inadequacy of the allowance, I now receive to meet the exigencies of so large a Family, for the present solely dependant upon the remuneration of Government, I am induced further to add my anxiety for some active situation of respectability, and to tender my faithful assurance that neither integrity or zeal shall be wanting on my part to qualify me for the discharge of any His Excellency may, in his goodness, be pleased to appoint me to, and have the honor, &c.,

JAMES RAYMOND.

[Sub-enclosure No. 1.]

THE RIGHT HONBLE. H. GOULBURN TO UNDER SECRETARY HORTON.

8th April, 1824.

Recommend-
ation in
favour of
J. Raymond.

THE bearer of this, Mr. John Raymond, is anxious to go to New South Wales as a Settler. He is strongly recommended to me as a deserving man, and by assisting him you will oblige both him and

Yours truly,

H. GOULBURN.

[Sub-enclosure No. 2.]

EARL BATHURST TO THE RIGHT HONBLE. H. GOULBURN.

1827.
27 Jan.

16th July, 1824.

I HAVE had the honor of receiving your Letter, dated the 8th instant, submitting the ease of Mr. Raymond, who is proceeding to New South Wales, and stating the grounds on which the Lord Lieutenant is induced to hope that a free Passage will be afforded to that Gentleman and his family; in reply to which, I beg to acquaint you that the Government have long since discontinued the practice of granting Free Passages to persons, proceeding as Settlers to that Colony; but, under the circumstances of Mr. Raymond's case, I have no hesitation in granting to him that indulgence.

Free passage
granted to
J. Raymond.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Marquis of Huntly.)

Sir,

Government House, 28th January, 1827.

28 Jan.

I have the honor to acquaint you, in reference to my letter of the 4th of December last, that I have received the series of the numbered Despatches from your Office to the 31st of August last, No. 63, with the exception of numbers 25 and 27, which have not yet arrived.

Despatches
acknowledged.

I have also to acknowledge the receipt of the following letters from Earl Bathurst, in addition to the numbered Despatches, vizt.

20 May, 1826, (Separate, Pointing out the mode in which Individuals are to forward representations to the Secretary of State.

15 July, 1826, Separate, respecting letter addressed by Mr. Lethbridge to Sir Thomas Brisbane.

26 July, 1826, Separate, respecting the Coal Mines at New Castle.

I have only to add that the Communications, contained in the above Despatches, will be attended to without loss of time, and that such of them, as require it, will be specially replied to.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Marquis of Huntly.)

Sir,

Government House, 29th January, 1827.

29 Jan.

I have the honor to acknowledge the receipt of your several letters of the dates, expressed in the margin,* which arrived by the ships Speke, Australia and Grenada, and shall lose

Despatches
acknowledged.

* *Marginal note.*—1826, 14th, 25th June; 8th, 17th, 24th July; 1st, 3rd, 5th, 8th, 10th, 11th, 13th, 14th, 20th, 21st, 22nd August; 2nd September.

1827.
29 Jan.

no time in carrying the orders, which they contain, into effect; and I shall reply thereto specially in such cases, as the subjects may appear to render it necessary. I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 11, per ship Marquis of Huntly; acknowledged by Viscount Goderich, 12th July, 1827.)

31 Jan.

My Lord,

Government House, 31st January, 1827.

Transmission
of petition to
H.M. the King
from colonists.

I have the honor to acquaint your Lordship that a Public meeting was convened on Wednesday last for the purpose of petitioning His Majesty and the two Houses of Parliament to extend to the Colony "Trial by Jury" and "Taxation by Representation." Petitions to this effect were accordingly signed; and I have the honor to forward one, addressed to His Majesty, which has been presented by a Deputation, consisting of Mr. Mackaness, the Sheriff, Sir John Jamison, and Mr. Gregory Blaxland. The latter Gentleman intends to proceed to England, and is charged with the Petition to the two Houses of Parliament.

I beg to enclose the Copy of a Paper, which was delivered to me with the Petition, and of the answer which I returned.

Revenue
collected
in colony.

As reference is made in the Petition to the Revenue of last year, which is stated to have amounted to £65,000, intending, as may be presumed, that it should be understood that the Taxes are burthensome, I have thought it advisable to transmit for your Lordship's information a statement of the *Duties* and *Dues*, collected during the last year, there being in fact nothing paid by the Inhabitants in the shape of a direct Tax.

The principal Duties received are those on Spirits and Tobacco, and an *ad valorem* Duty of 5 per cent. on foreign Goods imported. The Publicans' licenses, for which they pay £25 each, also forms a principal item; the whole amount under the Heads of Duties and Dues rather exceeding, as will be seen by the Statement, £57,000.

It will be perceived that other monies have been received to the amount of £4,872, being for the sale of Government Stock, etc., which cannot be classed under the head of either Duties or Taxes; and I have only to add that the rent of the Tolls and Ferries falls infinitely short of making and keeping the Roads and Bridges in repair, the number of men employed for these purposes being in general about seven hundred.

As to the intention, which is mentioned in the Petition, of increasing the Taxes, it will be sufficient for me to state that I have never before heard of it, and am totally unacquainted with the source from whence this information has been derived.

The Petitioners, in order as it would seem to prove the competency of the Colony to furnish the number of Members (100), which they have proposed for the Legislative Assembly, state "that there are at present among them 88 Gentlemen, who have been raised to the Magistracy, as well on account of their property and education as on account of their residence in the various districts and Counties, of which the Colony is at present composed." I do myself the honor, in consequence, to transmit for your Lordship's information a List of the Magistrates of the Colony; by which it appears that 83 are enrolled, twenty of whom are in the immediate service of Government, and ten officers of the Navy and Army on Half Pay. The Officers of the Military service, who are on full pay, have been appointed to the Magistracy from necessity, as private Gentlemen could not be found to perform the Duties in the Districts required.

1827.
31 Jan.

Colonists
available as
members of
proposed
assembly.

I have, &c.,

RA. DARLING

[Enclosure No. 1.]

THE PETITION*

of the Gentry, Merchants, Landholders, Yeomen, Traders and other Free Inhabitants of Your Majesty's Colony of New South Wales, assembled at a Public Meeting, duly convened by the Sheriff of the Colony,

Petition of
colonists
soliciting trial
by jury and
taxation by
representation.

To the King's most excellent Majesty.

Most Humbly Sheweth,

That your Majesty's most loyal and dutiful Subjects humbly beg leave to approach your Majesty's Throne by means of this their humble Petition, and to assure your Majesty that, in ardent and constitutional loyalty to your Majesty's person and Government, they are not surpassed by any of your Majesty's Subjects in any portion of your Majesty's Dominions.

That, while they feel most thankful to your Majesty and the two Houses of Parliament for the extension of Civil privilege, which they derived from the Act, passed in the Fourth year of your Majesty's Reign, intituled, "An Act to provide, until the first day of January, One thousand, eight hundred and twenty seven, and until the end of the next Session of Parliament, for the better administration of Justice in New South Wales and Van Dieman's Land, and for the more effectual government thereof, and for other purposes relating thereto," while they gratefully acknowledge that the most substantial advantages have accrued to them from the more efficient dispensation of Justice, which has since prevailed from the partial introduction of Trial by Jury, and above all from the unrestricted Liberty of

* Note 15.

1827.
31 Jan.

Petition of
colonists
soliciting trial
by jury and
taxation by
representation.

the Press, which has been the means of detecting and preventing numberless abuses and oppressions, the natural effect of that arbitrary system of Government, which was necessarily coeval with the foundation of the Colony, They at the same time feel it a duty to themselves to represent to your Majesty, that, whatever may have been their past incompetency to be admitted to the full benefits of the British Constitution, the time has at length arrived, when they humbly hope to be liberated from all disfranchisements, to be placed on the same footing* as all other your Majesty's Plantations, settled by British subjects, and together with the Liberty of the Press, which they already enjoy, to be re-invested with these other imprescriptive Rights of Englishmen, Trial by Jury and Taxation by Representation.

In soliciting these Privileges at your Majesty's hand, your Majesty's humble Petitioners are satisfied that your Majesty's royal Father, in sanctioning the withholding of them at the period of their first Settlement on these Shores, was actuated solely by a conviction that such Privileges were incompatible, as well with the scanty numbers of the Free population at that time, as with the penal objects, which were then exclusively in contemplation. And your Majesty's humble Petitioners are further satisfied that your Majesty, in following up this original policy, with those slight modifications, which were introduced into it by the said Act of the fourth year of your Majesty's reign, has been influenced by a belief that the same causes, which occasioned this constrained deviation from the course, pursued by your Majesty's illustrious Predecessors, former Kings of England, in the foundation of the British Colonies in the West Indies and America, still operated to such a degree as to render it inexpedient to extend to your Majesty's humble Petitioners the full possession of privileges, which they feel confident that your Majesty would not have concurred in withholding on any grounds, except a persuasion of their moral or physical incompetency to exercise them.

That your Majesty's humble Petitioners submit to your Majesty that their competency for *Trial by Jury* has been proved by upwards of two years experience of that mode of Trial in the Court of Quarter Session, whence, although four fifths of your Majesty's humble Petitioners have been hitherto excluded from acting as Jurors, upon the assumption that such of them, as were originally transported to this Colony, were not eligible by Law to that Office, That ancient and constitutional mode of Trial has nevertheless been carried on by so small a proportion of their numbers to the equal furtherance of public Justice and

* Note 16.

satisfaction of the Colonists at large; That the expediency of a general introduction of Trial by Jury has been established by the almost unanimous opinion of the Magistrates of the Colony, conveyed to your Majesty's late most respected Representative, Sir Thomas Brisbane, and by him forwarded,* with his cordial concurrence and approbation, to your Majesty's Secretary of State for the Colonies. Your Majesty's humble Petitioners, however, are not ignorant that, notwithstanding these proofs of their present capacity for the enjoyment of Trial by Jury, it may and probably will be attempted by a certain inconsiderable party here, who are inimical to all the Free Institutions of their Native Country, to impress on the minds of your Majesty's Ministers that your Majesty's humble Petitioners are neither fit nor solicitous for this mode of Trial; and that, in support of this assertion, they will rely mainly on the fact that the sixth Section of the said Act of Parliament, passed in the fourth year of your Majesty's reign, which provides, "That in all cases where the Plaintiff and Defendant shall be desirous of having any Issue of Fact tried by a Jury of twelve men, and shall concur in an application for that purpose to the Judge of the Supreme Court, such Issue of Fact shall be tried by a Jury under the direction of the said Judge," has been acted upon but once in a period of nearly three years. This apparent anomaly, however, is of easy solution; for the said Act of Parliament having made the concurrence of both parties necessary to the obtaining of a Jury, it will be obvious to your Majesty that, whenever a Jury might be beneficial to the one party, it might be equally prejudicial to the other. But were this fact so much relied on by the few opponents of Trial by Jury, as complete a proof of the distaste of the majority of your Majesty's Subjects here for that mode of Trial, as the said party pretend, Your Majesty's humble Petitioners are satisfied that no stronger reason could be urged to induce your Majesty to restore a Privilege, which in this case would be avowedly necessary to revive among them those English feelings and predilections, which a thirty nine years deprivation of it must according to the opinion of this party have so nearly extinguished. Your Majesty's humble Petitioners are convinced that your Majesty is impressed with a thorough veneration for the Free Institutions of your Country; And that it is and ever will be your Majesty's highest pride and glory to reign over Subjects impressed with a similar veneration, and not over men, who, though English by descent, may become Anti-English in heart by the force of a system, essentially Anti-English in its principles and operation.

1827.
31 Jan.

Petition of
colonists
soliciting trial
by jury and
taxation by
representation.

* Note 17.

1827.
31 Jan.

Petition of
colonists
soliciting trial
by jury and
taxation by
representation.

That the present competency of your Majesty's humble Petitioners for that other great privilege of the British Constitution, *Taxation by Representation*, will be obvious from a reference to their *Population, Income, and Revenue*.

That the *entire population* of this Colony, as far as your Majesty's humble Petitioners can collect, amounts to about *Fifty five thousand Souls*; thirty five thousand of whom are free, and the rest consist of Convicts, the far greater part of whom have been assigned by the Governors of the Colony for the time being to your Majesty's humble Petitioners, and are supported by them *Free of all expence* to the *Mother Country*.

That the *gross annual Produce* of the *Land and Labour* of the Colony, including the produce of the *Coal Mines and Fisheries*, cannot be estimated at less than *Eight hundred thousand Pounds*.

That, of this Sum, about Two hundred and fifty thousand Pounds per annum constitutes the exportable Income of your Majesty's humble Petitioners, and consists of rude Produce or of Bills on your Majesty's Treasury, and other Bills, for which such Produce is exchanged in this Colony.

That the *Revenue* of this Colony amounted last year to upwards of Sixty thousand Pounds.

That this enormous sum has hitherto been levied on your Majesty's humble Petitioners by authority of Parliament, and otherwise without their consent, contrary to *Magna Charta*. That it is great beyond all former precedent, being little short of the whole amount of Taxes raised in the whole of British America in the year one thousand, seven hundred and seventy seven, when the various Governments and States, into which it was distributed, comprised a population of Three million of Souls. That it presses most grievously on every branch of the domestic industry of your Majesty's humble Petitioners; and that, notwithstanding its intolerable weight, fresh devices have been in agitation, and they fear are not yet abandoned, to increase its amount to the further depression and derangement of their internal prosperity without any local necessity to justify such an increase, and, in short, with no other view than to compel your Majesty's humble Petitioners to contribute, still more largely than they do at present, towards the general expenditure of His Majesty's Empire.

That, while your Majesty's humble Petitioners are willing to take upon themselves the entire expence of their Civil Government, in conformity with the directions, which have lately been issued by your Majesty's Secretary of State for the Colonies, they feel that no further contribution has ever been required either by your Majesty, or any of your Royal Predecessors, of

any of your Majesty's Subjects in any of your Majesty's plantations; and that it never could have entered into your Majesty's royal contemplation, or into the contemplation of the enlightened Ministers, who preside over your Majesty's Councils, either to require more of your Majesty's humble Petitioners, or to cast upon them the exclusive expence of their civil administration, without at the same time leaving it to an Assembly, freely chosen among themselves, to regulate its amount, and levy it in a manner, the least onerous and burdensome to the Community at large.

That, impressed, fully with this conviction, your Majesty's humble Petitioners, on this the *Thirty ninth Anniversary* of their institution as a Colony, humbly but confidently rely that your Majesty will deign to restore to them those ancient and unalienable Birthrights of Englishmen, Trial by Jury and taxation by representation, which have been so long suspended by causes, which they humbly hope it will be manifest to your Majesty no longer exist.

That, in petitioning your Majesty, however, for an *Elective Assembly*, invested with the like faculties that belong to the Legislative Assemblies in all the rest of your Majesty's British Plantations, your Majesty's humble Petitioners would solicit a very equivocal boon at the hand of their most gracious Sovereign, did they not at the same time humbly apprise your Majesty that there are certain private Families among them (being the before mentioned few, who are inimical to Trial by Jury) possessing sufficient wealth and influence to monopolize for themselves and their Nominees a great many Votes, in whatever Elective Legislature may be established by your Majesty; and that, to neutralize this influence, and to give the Colonists at large a real voice in the management of their affairs, it will be expedient in the judgment of your Majesty's humble Petitioners that the *Legislative Assembly*, whenever it may be constituted by your Majesty, should not consist of fewer than *One hundred Members*.

That your Majesty's humble Petitioners are the more anxious to impress on your Majesty's gracious consideration the expediency of establishing a *Legislative Body*, sufficiently numerous in the first instance to counteract the influence before adverted to, because that influence would probably be strengthened by a Body of about sixty civil Officers and Military Officers, together holding Civil Offices, the higher orders of whom might possibly obtain Seats in such an Assembly, and the whole of them combine a weight of interest in the Assembly and out of it, which nothing but independent numbers could resist; and which, if not

1827.
31 Jan.

Petition of
colonists
soliciting trial
by jury and
taxation by
representation.

1827.
31 Jan.

Petition of
colonists
soliciting trial
by jury and
taxation by
representation.

resisted, would place the money of your Majesty's humble Petitioners in the hands of those whose duty of public economy would be in direct opposition to their private interests.

That, degraded as your Majesty's humble Petitioners consider their present political condition in being deprived of those ancient Birthrights and Bulwarks of the British Constitution, Trial by Jury and Taxation by representation, and, inefficient as their present system of Government has been found to administer to their growing wants and to foster their nascent industry, they nevertheless beg humbly to assure your Majesty that they would prefer continuing in that degraded condition, in which they are, rather than have an Elective Legislature, created among them, of such circumscribed extent, as would have the name of "popular representation," whilst in reality it delivered them into the hands of an oppressive and rapacious Oligarchy.

That, in order to remove any doubts, which your Majesty might entertain, as to the capability of your Majesty's humble Petitioners to furnish so large a number of Members out of so limited a population, your Majesty's humble Petitioners further beg leave to state that there are, at present, among them eighty eight Gentlemen, who have been raised to the Magistracy, as well on account of their property and education, as on account of their residence in the various Districts and Counties, of which the Colony is at present composed; and that three times as many more Gentlemen are to be found among them, who, though not required to act as Magistrates, are equally fitted by their wealth and talents to act as Members of a Legislative Assembly. These numbers, it must be needless to suggest to your Majesty, are advancing in rapid progression as well from immigration as from natural increase, and must be considerably augmented by these causes before any Representative System can be organized among your Majesty's humble Petitioners.

That, while your Majesty's humble Petitioners admit, on the one hand, that your Majesty, by graciously acceding to this part of their most humble Petition, would at the present moment establish in many parts of the Colony a disproportion between the number of the Electors and the elected, greater perhaps than exists in any other of your Majesty's Plantations, they beg, on the other hand, most humbly to remind your Majesty that the rapidity of their past growth as a Colony furnishes proof that, if the disproportion be an inconvenience, a very few years will suffice to remove it, while the evil, which it would remedy, would become every year of greater inveteracy and more difficult cure.

That your Majesty's humble Petitioners forbear to enter into any detail of their humble opinion as to the number of Members, whom their several Towns, Districts and Counties might most advantageously contribute towards the constitution of the said Elective Assembly, which they most humbly solicit of your Majesty's Bounty, being satisfied that the interests of your Majesty's humble Petitioners would be best consulted by remitting the Settlement of such Details (subject however to your Majesty's ratification) to your Majesty's representative in the Colony.

1827.
31 Jan.
Petition of
colonists
soliciting trial
by jury and
taxation by
representation.

That your Majesty's humble Petitioners, however, cannot forbear expressing their most humble and earnest hope that the qualifications of the Candidates and Voters may be so moderate, as to render Freeholders, possessing One thousand Acres of Land or more, eligible to act as Members, and to allow the entire of the free population, whether freeholders or householders of ten pounds a year, the right of voting at Elections.

These *the earnest wishes and wants* of your Majesty's humble Petitioners they beg leave most respectfully and dutifully to lay at the Foot of your Majesty's throne, in full confidence that they will obtain that share of your Majesty's royal and gracious consideration, which they may merit; and that your Majesty, in the plenitude of your royal wisdom and paternal anxiety for the melioration of the moral and political condition of all your Majesty's loving Subjects, will vouchsafe to bestow on your Majesty's loyal and dutiful Colonists of New South Wales those inherent Birthrights of the British Constitution, of which they have been so long debarred. And that your Majesty will rivet their already ardent and devoted loyalty and attachment to your Majesty's person and family by conceding to them Privileges, which have been proved to be the best safeguard as well of private and personal right as of public Security.

And your Majesty's most humble Petitioners,

As in duty bound,
will ever pray,

Signed for and on behalf of the meeting,

JOHN MACKANESS, Sheriff of the Colony.

[Enclosure No. 2.]

SIR JOHN JAMISON, J. MACKANESS AND G. BLAXLAND TO GOVERNOR
DARLING.

MAY it please Your Excellency, The Deputation, now in Your Excellency's presence, had the honor of being nominated by the public Meeting, which took place at the Court House in Castle-reagh Street on Friday last, for the purpose of most respectfully

Presentation
of petition
to governor.

1827.
31 Jan.
Presentation
of petition
to governor.

requesting that your Excellency would receive and become the high medium of transmitting the Petition, there agreed upon, to be laid at the foot of His Majesty's Throne.

And we were further instructed to solicit your Excellency's favorable support of the prayer of the Petition, so importantly necessary to increase the prosperity and happiness of the people your Excellency governs.

JOHN JAMISON. GREGORY BLAXLAND.
J. MACKANESS, Sheriff.

[Enclosure No. 3.]

GOVERNOR DARLING TO SIR JOHN JAMISON, J. MACKANESS AND G. BLAXLAND.

Reply to
address on
presentation.

Gentlemen, Government House, 30th January, 1827.

I shall lose no time in forwarding the Petition, which I have now received, to the Earl Bathurst, His Majesty's Principal Secretary of State for the Colonies, in order, as the Petitioners request, to its being presented to the Throne.

I can only repeat the assurances, which I gave on assuming the administration of the Government, that I am most anxious to promote the welfare of the Colony and the true interests of the Inhabitants; and I shall lose no opportunity in doing whatever may contribute to these important objects.

I have, &c.,
RA. DARLING.

[Enclosure No. 4.]

Statement of
dues collected
in year 1826.

STATEMENT of Dues collected in the Colony of New South Wales
From 1st January to 31st December, 1826.

Duties on Imported Spirits	£41,737	13	3
„ on Spirits distilled in the Colony	1,866	7	10½
„ on Tobacco	2,387	12	0
„ on Foreign Goods Five per Cent. ad valorum	3,580	1	1
Dues of Entry and Clearance	150	19	0
Wharfage Dues	1,249	6	0
Auction Dues	558	19	3½
Licenses	3,081	11	5
Market Dues	378	2	4½
Quit rents	140	0	0
Fines and Fees of Office	1,943	10	1½
Slaughtering Dues	100	0	7
Light House Dues	182	18	6
	£57,357	1	5½

STATEMENT of Sums collected under the following Heads.

Tolls and Ferries	£465	0	0
Hire of Convict Mechanics	303	15	4
Rentals	188	2	5½
Sales of Cedar Cut on Crown Lands charged at ½d. per foot on importation into Sydney ...	573	17	4
Sales of Coal at Newcastle	319	19	9
„ of Crown Stock, etc.	2,926	7	0½
Charges for use of Government heaving down place	95	8	0
	£4,872	9	11½

[Enclosure No. 5.]
LIST OF MAGISTRATES.

Civil officers in the employ of Government.	No	Military Officers on Full Pay.	No.	Officers on Half Pay.	Not in the employ of Government	Remarks.
J. T. Campbell, Esq.	1	Dy. Comy. Genl. Wemyss.	1	Captain Antill	1	Formerly Police Magistrate.
John Piper	2	Captain Gillman	2	Asst. Comy. Genl. Palmer	2	Formerly Paymaster, 102
John Harris	3	Lt. Col. Dumaresq	3	Lieut. Palmer, R.N.	3	[Regiment.
John Oxley	4	Asst. Comy. Genl. Lithgow	4	Surgeon D. Reid, R.N.	4	
James Bowman	5	Lieut. Everden	5	Lieut. Fuffer	5	
John Campbell	6	Lieut. Low	6	Lieut. Oxilvie, R.N.	6	
William Balcombe.	7	Captain Wright	7	Dy. Asst. Comy. Genl. Walker	7	Formerly Surgeon of the Navy.
G. G. Mills	8	Captain Logan	8	Lieut. Gibbs, R.N.	8	
William Carter	9	Captain Dumaresq	9	Lieut. Macalister	9	
T. G. Harrington	10	Lieut. Christie	10	Surgeon J. Dalhenty, R.N.	10	
F. N. Ross	11	Lieut. Col. Wall	11		11	
F. A. Hely	12	Major Lockyer	12		12	Formerly Lieut. in the 48th [Regt.
G. Brooks	13	Captain Innes	13		13	
William Cordeaux	14	Lieut. Fitzgerald	14		14	
Patrick Hill	15	Major Campbell	15		15	
Alexander McLeay	16	Captain Wakefield	16		16	
Arch. MacLeod	17	Lieut. Burchell	17		17	
John Gold	18	Lieut. Warner	18		18	
Rev. H. Fulton	19	Captain Brabyn	19		19	
Rev. T. Reddall	20	Lieut. Lawson	20		20	
		Lieut. Ball	21		21	
					22	
					23	
					24	
					25	
					26	
					27	
					28	
					29	
					30	
					31	
					32	

1827.
31 Jan.

List of
magistrates.

Late Superintendent at Ena
[Plains,
Agent for the Australian
[Agricultural Company.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

1827.
31 Jan.

(Despatch marked "Secret and Confidential," per ship Marquis of Huntly.)

My dear Sir, Government House, 31st January, 1827.

Notification of
appointment of
J. Holland
not received.

My Dispatch of the 11th inst., No. 7, will apprise you that I have not received any notification* of Mr. Holland's Appointment as Solicitor General. As he assured me on his Arrival, it had taken place, and it was incidentally mentioned in a Letter of Mr. Barnard's, I was induced to announce it in the Gazette, together with his Appointment as Commissioner of the Courts of Requests, taking for granted I should receive the Official Notification from your Office by the first opportunity.

Refusal of
chief justice
to swear in
J. Holland.Incapacity of
J. Holland for
office of
solicitor
general.

You will perceive by the enclosed Letter, which he has written to the Public Secretary, that the Chief Justice has declined swearing him in as Solicitor General, and the grounds of having done so. The fact is too obvious that Mr. Holland is unfit for the situation, and the Government would be exposed to great embarrassment by his employment. To say the least, he appears to possess none of the qualifications requisite to one of the first Law Officers of the Crown in this Colony. His debut, which he made by a Sale of Books evidently intended for the Market, was not calculated to make that impression, which it is so important the Officers filling the higher Posts of the Government should make on a Community of this description; nor does the manner of his living or proceeding correspond with his situation. Without seeking for further proof of his talents, you will be able to judge whether the enclosed Letter shews either the accuracy or acumen of a Lawyer, who should be able to support the Government, of which he is a Member. I can only repeat, if the Attorney and the Solicitor General are not above mediocrity, Men of established reputation and experience, the Government, considering the talents of its opponents, will have little chance of maintaining its character. Lord Bathurst's Despatch† just received respecting the *Post Office Act* is a proof that *experience* at least is necessary on the part of the Attorney General. In short, every Act, that has been passed here, has been severely criticised by the "Australian," and some of them, I understand, have been subjected to more than one revision.

Though I may regret any inconvenience, which Mr. Holland individually may feel, I should not under all the circumstances of the Case consider myself justified in granting him a Commission as Solicitor General; and I have only to hope, before it becomes necessary, that some other means will be found of

* Note 18. † Note 19.

disposing of him, should the Appointment of Commissioner of the Courts of Requests, which he holds, not be considered a sufficient reward for his Services.

I remain, &c.,

RA. DARLING.

[Enclosure.]

MR. JAMES HOLLAND TO COLONIAL SECRETARY MACLEAY.

Sir,

Sydney, 30th January, 1827.

In consequence of an arrangement made on Friday between myself and the Chief Justice, that Gentleman informed me of his reason for not swearing me into the Office of Solicitor General (although on the 12th December I had been gazetted) to the end that I may lay them before His Excellency, his opinions that "in all cases where the Appointment is under the Great Seal of the Colony" (as in the case with the Office in question) "a formal Commission under such Seal is indispensable."

Reasons of
chief justice
for refusal
to swear in
J. Holland.

The Chief Justice also adds "In the ordinary course of Colonial Appointments a Warrant under His Majesty's Sign Manual is transmitted by the Secretary of State to the Governor, who thereupon causes Letters to be made Patent; but this course is frequently deviated from, and an Official Letter from the Secretary of State is considered a sufficient Warrant for the Governor."

The Latter plan was certainly adopted with reference to my Appointment here by the Colonial Department; for, when I applied to the under Secretary of State for my Warrant, as I had done when appointed Advocate General and Attorney General of Bermuda, he refused it, and the Letter Book was referred to, wherein was the one appointing me in the stead of Mr. Stephen as Solicitor General and Commissioner of the Court of Requests. At that time, I have only borrowed £300, and the identity of that Letter may be known from that fact. I urged, however, to have a Copy of this Letter to shew my Friends, but it was refused me as unnecessary; however, at last a Sealed Copy of this Letter was delivered to me, that was the one I left at Green's Hotel, Earl Street, on the 1st May, 1826. Mr. Musson was appointed Attorney General for Bermuda in my stead, and I was transferred from Mr. Horton to Mr. Hay, and by him to Mr. Barnard as Colonial Agent, who advanced me immediately £300. The Commissioners of the Treasury paid me the Bermuda estimate from 1st January to 1st May, £166 10s. 10d., which is all I got, the £200 making £500 being directed by the Colonial Department to be advanced by Mr. Barnard to enable me to Pay my Voyage, and he rather objected, as it was more than one half of my Salary, the usual rate of Allowance. The consecutive acts of the Under Secretary of State in my

Details of
appointment of
J. Holland.

1827.
31 Jan.
Details of
appointment of
J. Holland.

pecuniary arrangements with Bermuda. The Memorial presented to the Treasury on my account by Mr. Huskisson, the Account finally returned and terms of Liquidation entered into by the Colonial Department and Mr. Wilson on manifest proofs of my Appointments and of the reality of the engagements of the Government with me, which circumstances that I could not controul have alone averted.

Under these circumstances, I have now but one alternative, and it is that you will acquaint His Excellency with these facts, that the Chief Justice may place me in that position to which I trust with this explanation His Excellency will see no real objection, taking into consideration the remote distance, length of time, and personally important interest and inconvenience involved in this catastrophe.

I have, &c.,

JAMES HOLLAND.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 5, per ship Guilford; acknowledged by Governor Darling, 2nd August, 1827.)

1 Feb.
Advance to
widow of
W. Woods.

Sir,

Downing Street, 1st Febr., 1827.

I have had the honour to receive your dispatch of the 21st July last, stating the circumstances under which you had been induced to advance the Sum of Sixty Pounds to the Widow of Lieut't Woods to enable her to return with her family to this Country; and I beg to acquaint you in reply that the Secretary at War has given directions for paying the said Sum into the hands of the Colonial Agent for the purpose of its being carried to the credit of the Colonial Government.

I have, &c.,

BATHURST.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 12, per ship Marquis of Huntly.)

My Lord,

Government House, 1st February, 1827.

Embarkation
of division of
3rd regiment.

I have the honor to inform your Lordship that the 1st Division of the Buffs, consisting of three Companies, has proceeded* to Calcutta. The Head Quarters of that Corps will remain here under Colonel Stewart, until the whole of the 39th Regiment shall have arrived, and the services of that Officer, who has applied himself with unremitting zeal to the performance of several important Duties, will be a great accommodation to the Government in the present press of Business.

I have, &c.,

RA. DARLING.

* Marginal note.—Embarked 246 R. and F.; Remain, 236, R. and F.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

1827.
1 Feb.

(Despatch per ship Marquis of Huntly.)

Sir,

Government House, 1st February, 1827.

I have delayed replying to your letter of the 26th of July, 1825, on the subject of Captain McArthur's plan for the formation of a Militia, until I should have an opportunity of obtaining such local information as would enable me to form a correct opinion upon it. I am now quite satisfied this Colony is not prepared for such an Establishment, and that the necessity of attendance would be considered a grievance. Besides it appears to me that the great object here is to keep people on their farms, and, with the assistance of their servants, to induce them to protect their property against Bushrangers or Natives in the event of their becoming troublesome. Men cannot here with any degree of safety do as they would in England, even though they were so disposed. What man in his senses would leave his Family and his property for any length of time at the mercy of convict servants? I consulted Lieut't Governor Arthur on the subject, when at Van Diemen's Land, and he then gave the opinion I have now expressed. His great object was to encourage the people *not* to leave their farms for a moment; and I pointed out to him that nothing would so effectually insure this as the certainty that Troops were at hand in case of need; and I believe that the adoption of this measure, which, however, until my arrival he had not had the means of carrying extensively into effect, has contributed more to the present tranquility of Van Diemen's Land than anything else. I have only to add that this will in my opinion be better preserved by an efficient Mounted Police than by any other means, and certainly at a less Expense. The Expence, however, is nothing with reference to the object. If people are satisfied that their Cattle and property are secured from the depredations of Bushrangers, that as they sow so will they reap, and their families may rest without apprehension of danger, the progress of the country will be rapid and almost boundless; and these important objects will amply repay any expence that may be incurred in attaining them.

I am not aware it is necessary I should say more on the subject of Captain McArthur's plan, which on the whole appears to be well digested. But the simple answer to it is that it is not suited to the present circumstances of New South Wales.

I have, &c.,

RA. DARLING.

Objections to
formation
of militia.

1827.
2 Feb.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch marked "Private," per ship Guilford; acknowledged by Governor Darling, 2nd August, 1827.)

My dear Sir,

Downing Street, 2nd Feby., 1827.

Appointment of
T. L. Mitchell
as dep. surveyor
general.

In consequence of the very pressing demand, which you have made for additional Surveyors, and the difficulty of finding persons properly qualified to undertake those duties, Lord Bathurst has accepted the Services of Major Mitchell,* respecting whose Talents and experience it is only necessary for me to refer you to the inclosed letters from Sir George Murray, by whom Major Mitchell's name was originally brought under the notice of Lord Bathurst.

It was impossible to induce an Officer of this superior order in his profession to accept one of the subordinate Appointments in the Surveyor General's Department, and moreover conceiving that it would be of importance not only to have the benefit of this Officer's exertions, as second to Mr. Oxley, but to have a person in the Colony who was competent to succeed him, whenever circumstances required such an appointment, Lord Bathurst has not hesitated to allow that consideration to outweigh every other; and you will, therefore, have the goodness to understand that Major Mitchell is to be considered as standing next in rank to Mr. Oxley, whom he will ultimately succeed.

Salary granted.

Major Mitchell's Salary has been fixed by Lord Bathurst at £500 per annum, commencing from the date of his embarkation, in addition to which he will of course receive the usual allowance for a Horse and for Lodgings.

I have, &c.,

R. W. HAY.

[Enclosure No. 1.]

LIEUTENANT-GENERAL SIR GEORGE MURRAY TO UNDER SECRETARY HAY.

My dear Sir,

Dublin, 23rd October, 1825.

Proposed
employment of
T. L. Mitchell
in Grecian
archipelago.

There is a Captain Mitchell, who has been employed by me first in making Surveys in the Peninsula of the several Fields of Battle, and subsequently in drawing Military Plans from their actual Surveys. He is a very intelligent and industrious Man, and possesses a considerable share of the spirit of Enterprize and Adventure. He writes to me that he learns a Vessel has been commissioned under Captain Copeland for the purpose of making a Survey of the Grecian Archipelago, and he suggests his being employed for the purpose of connecting (where it may be practicable to do so) a Land Survey with the Marine Survey, carrying on by Captn. Copeland.

* Note 20.

It has always appeared to me that it would not only be desirable to connect Land and Marine Surveys to a greater degree than has usually been done, when the latter have been undertaken; but that it should be made a matter of Public Interest also to take every opportunity of extending our knowledge of the Geography and Topography of these parts of the Old World, of which the History or even the Poetry only has come down to us. Our knowledge in this respect may be said, I believe, to amount to little or nothing, if we except this Christian part of Europe. The labours of one or two individuals could not indeed do much, if you compare them with great National Surveys; but still a good deal of Information might be gained. The present state of Greece, you may say, is also not favorable for such an undertaking; but it is better, I think, to take it as it is than to lose an opportunity of attempting something in the way I have mentioned. The reason of my troubling you with a letter on this subject is that I know you are extremely friendly to the improvement of knowledge in all Branches, and that your intimacy at the Admiralty, as well as your present station in the Colonial Office, afford you an opportunity of facilitating the accomplishment of Captain Mitchell's suggestion, if you think well of it.

In case you should think it desirable to have any communication with Captn. Mitchell himself, his Address is

10 Thistle Grove, Chelsea.

After such an Address, I need not tell you that he is a Scotchman.

Believe me, &c.,

GEO. MURRAY.

I ought perhaps to mention that you must not expect to find Captn. Mitchell a Greek Scholar, but a skilful, accurate and a practised Surveyor, and a very good Draftsman. His Plans are indeed beautifully executed.

[Enclosure No. 2.]

LIEUT.-GENERAL SIR GEORGE MURRAY TO UNDER SECRETARY HAY.

My dear Sir,

Dublin, 17 January, 1827.

I have received the enclosed letter from Mr. Mitchell, and write these few lines to thank you in the first place for your kind recollection of him.

You are already aware of my Sentiments in regard to his Talents and acquirements, and his active and industrious habits. I will add further that I believe him to be a strictly honest and well principled Man, and from my own experience (perhaps Lord Bathurst's and your own in the Colonial Office may confirm the

1827.
2 Feb.

Proposed
employment of
T. L. Mitchell
in Grecian
archipelago.

Testimony
in favour of
T. L. Mitchell.

1827.
2 Feb.

opinion) I am inclined to think that it is very desirable to let no opportunity pass of sending out Men of this latter description to the Colonies, as often as such can be found disposed to go, who possess tolerable qualifications for the particuilar branch of Science, in which they are wanted. Believe me, &c.,

GEO. MURRAY.

[Enclosure No. 3.]

T. L. MITCHELL TO LIEUT.-GENERAL SIR GEORGE MURRAY.

Dear Sir George, Thistle Grove, Chelsea, 14 January, 1827.

I have had some communication lately with Mr. Hay, who bearing in mind your valuable recommendation, sent for me soon after I had the honor to address you, and again yesterday.

At the first interview, Mr. Hay merely asked me what would induce me to go to New South Wales, and I understood he wanted assistance in the subordinate part of the General Survey (as you once mentioned); but he probably had then in contemplation an arrangement embracing three different appointments of £500 pr. Ann. each, which he was kind enough to propose for my selection yesterday.

1st. A principal Assistant or secondary in the general Survey, with the suecession to Mr. Oxley.

2d. A *Collector* (I think Mr. Hay said) having some knowledge of surveying, for allotting lands, etc.

3d. A Civil Engineer.

Mr. Hay, however, thought Lord Bathurst might have somebody in view for the first of these, but if not he kindly said he should have no hesitation in recommending me to His Lordship for that Appointment, and he allowed me two weeks in the meantime to make up my mind.

I should gladly accept this with your Approbation, both as that for which I feel best qualified, and because it leads to another so very good, affording a field for exertion quite suited to my wishes.

The *Second* seems less desirable in every respect to me, especially while the first has been in some sort offered me.

I do not feel qualified to undertake the comprehensive duties of the *third*.

Mr. Hay requested me to mention the subject as little as possible; but I readily obtained his permission to consult you. I hasten, therefore, to acquaint you with the probable favorable result of your former kind recommendation, more especially because I think that, should you approve of such an Appointment, and, as it affects the public Service and my own benefit, Lord

Appointments
in N.S.W.
offered to
T. L. Mitchell.

Bathurst might probably be guided by you in making such a selection were His Lordship more directly aware that my Services in surveying had met your Approbation.

1827.
2 Feb.

I remain, &c.,
T. L. MITCHELL.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 13, per ship Marquis of Huntly.)

My Lord, Government House, 2nd February, 1827.

Although it is not in my power at this moment to forward, as directed by your Lordship's Dispatch of the 23rd of February, 1825, No. 20, a "State of Crime and Punishment," I will not omit the opportunity of acquainting your Lordship that the public tranquility continues undisturbed, and that the decrease of crime is very obvious.

Reports on
crime.

The number of criminals sentenced to suffer Death during the last year amounted to forty seven, Twenty two actually suffered. But no execution has taken place since the middle of October, a period of three months and a half. Considering the extent and composition of this community, these numbers are certainly not great; and I am most happy to find, the Criminal Court having just commenced its sittings, that the Calendar, as it is termed, contains very few cases of a serious nature. I would fain encourage the hope that the ground work of reformation has been laid and that the dispersion of the Troops throughout the Colony and the activity of the Mounted Police will act as a salutary restraint on those, who are not alive to a better feeling.

Capital
sentences.

Cases for trial.

I have, &c.,
RA. DARLING.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 14, per ship Marquis of Huntly: acknowledged by Viscount Goderich, 13th July, 1827.)

My Lord, Government House, 3rd February, 1827.

3 Feb.

I have received the accompanying letter and enclosures from Dr. Halloran, and have the honor to forward them to your Lordship, as he has requested.

The object of Dr. Halloran's application is to obtain the Grant of 640 acres of land, which were reserved for him by Sir Thomas Brisbane, and to receive the assistance of Government in establishing a free Grammar School.

Objects of
application of
L. Halloran.

Dr. Halloran* has been very recently liberated from Jail, where he had been kept for some time as a Debtor, and is still

* Note 21.

1827.
3 Feb.

deeply involved. His daughter, Mrs. Shortt, was in Jail at the same time, having been convicted of a Larceny. She is the wife of the person of that name, whose memorial I have the honor to forward to your Lordship with my present Dispatches.

Proposed
grant.

I have nothing to offer in addition to the simple fact which is stated with respect to the Grant of Land, which Dr. Halloran solicits.

Objections to
establishment
of school by
L. Halloran.

As to the Establishment of a free School, it is unnecessary for me to give my opinion whether Dr. Halloran's general character and present circumstances point him out as a fit person to be entrusted with the Education of Youth. He is now advanced in years; and, if the school were established, he would not in all probability be able to continue it for any length of time. Besides, the circumstance of the pecuniary embarrassment, under which he labours, seems to present an almost insuperable objection of itself to his being entrusted with the funds necessary to the object in view.

I have, &c.,

RA. DARLING.

[Enclosure.]

L. H. HALLORAN TO EARL BATHURST.

My Lord, Sydney, New South Wales, 2nd February, 1827.

Request for
grant of land
reserved by
Sir T. Brisbane.

In the month of November, 1825, I had the honor to address a letter to your Lordship, accompanied among other documents by a Notarial copy of one from Sir Thomas Brisbane, under date of the 11th of the preceding month (of which a duplicate No. 1 is enclosed), stating "that His Excellency had directed a section of land to be reserved for *me*, subject to the decision of His Majesty's Government." In my letter to your Lordship, now referred to, I prayed the confirmation to me of this Reserve, for which not having been favored by any communication in reply, I appealed to His present Excellency, a copy of whose answer (No. 2) is transmitted herewith. And, as this refers also to your Lordship's decision, I now repeat my very respectful appeal for confirmation of this Grant and for further Grants to my numerous family of nine children, which the restriction of *his* power alone, and not defect of desert on my part, prevented Sir Thomas Brisbane from conferring. *This*, his letter will testify and personal reference by your Lordship to that distinguished and beneficent character will, I am convinced, more fully explain and confirm the fact.

Prospectus for
proposed
grammar
school.

I forward also to your Lordship the Duplicate of a Prospectus of a Plan for the Establishment of a Public Free Grammar School in Sydney, which has long been a Desideratum, and which was approved, warmly supported, and liberally patronized

by Sir Thomas Brisbane. For the Promotion and support of such invaluable Institution, I applied to His Excellency Lt. Genl. Darling, praying the aid of the Colonial Government. My Memorial and His Excellency's Reply (Nos. 3 and 4) are herewith transmitted for your Lordship's perusal; and I earnestly implore from His Majesty's Ministers a favorable consideration of the application, and a compliance, at least as a temporary concession, with the prayer of the Memorial. I ground this appeal to your Lordship and His Majesty's Government in the immense, acknowledged Utility of such a Public Institution, and on the strong testimonials in your Lordship's possession of my good conduct and public services in this Colony for a long series of years from the two preceding Governors, Generals Macquarie and Sir Thomas Brisbane, and, from which Testimonials, I confide His present Excellency Genl. Darling has not found, during his Administration of the Government, any just grounds of Dissent.

I have, &c.,

L. H. HALLORAN.

1827.
3 Feb.
Request for
assistance by
government.

[Sub-enclosure No. 1.]

SIR THOMAS BRISBANE TO L. H. HALLORAN.

Sir, Government House, Sydney, 11th October, 1825.

It gives me sincere gratification to convey to you my Approbation of the assiduity, ability, and success, with which your Establishment for the Education of Youth has been carried on; and it affords me equal satisfaction in bearing testimony to your good conduct, both in private life, and as a public writer, since my Administration of the Government of the Colony. Were I at liberty to act from the impressions of my own mind, I should feel no hesitation in complying with your desire to have the allotments of Land for Yourself and your family. At present, however, it is only in my power to say, I am not at liberty to follow my own private inclinations. I will, however, lay Your Claims before His Majesty's Government for that Consideration, to which they are justly entitled; and I pledge myself to give them every support in my power. In the mean time, I shall direct a Section of Land to be reserved for you subject to the decision of His Majesty's Government.

Approval by
Sir T. Brisbane
of conduct of
L. Halloran.

Land to be
reserved.

I am, &c.,

THOS. BRISBANE.

[*"Proposals for the Foundation and Support of a Public Free Grammar School in the Town of Sydney, New South Wales," were printed as a pamphlet by R. Howe, government printer, 1825.*]

1827.
3 Feb.

[Sub-enclosure No. 2.]

COLONIAL SECRETARY MACLEAY TO L. H. HALLORAN.

Sir, Colonial Secretary's Office, 24th January, 1827.

Refusal to
grant reserved
land.

I have had the Honor to receive and submit to the Governor your letter of the 1st Instant, requesting a confirmation of 640 acres of Land, conditionally reserved for you by Order of Sir Thomas Brisbane.

In reply, I am directed by His Excellency to return the original Letter from Sir Thomas Brisbane (which was then transmitted, and is accordingly enclosed herein), and to add that it is not in His Excellency's power to confirm the reserve, therein mentioned, without Instructions to that effect from the Secretary of State.

I have, &c.,

ALEX. MCLEAY.

[Sub-enclosure No. 3.]

THE MEMORIAL

Memorial
soliciting
assistance in
establishment
of grammar
school.

of Laurence Halloran, Clerk, Doctor in Divinity, etc., etc., etc.

To His Excellency Lieut. Genl. Darling, Governor, Captain General and Commander in Chief, etc., etc., etc.

Very respectfully setteth forth,

That, in every infant state, the Education of Youth has been considered by Legislatures an object of primary importance, and that with its progress the spread of Civilization, Science, good morals and public prosperity has invariably been co-extensive.

That, in this country, during the first thirty years of its existence, the education of Youth was confined (with a single exception on a small scale) to the Acquirement of merely the inferior Branches of Elementary Instruction.

That, in the year 1819, your Memorialist, under the sanction and with the Countenance of Governor Macquarie, formed an Establishment in the Town of Sydney for the education of Youth in the higher branches of Literature on a more extended scale, which, from that time, your Memorialist has conducted with more personal credit than Advantage, and with a high degree of Estimation and of general Utility, as testified by repeated public Addresses to the then existing Authorities, and by the unqualified Approbation of the two preceding Governors.

That, about fifteen months ago, your Memorialist originated the Plan of a Public Free Grammar School in the Town of Sydney for the purpose of extending the Benefits of a liberal

Education, which was patronized by the late Governor, and approved and supported by the more intelligent portion of the Community.

1827.
3 Feb.

Memorial
soliciting
assistance in
establishment
of grammar
school.

That this incipient Institution has languished, and its views have been rendered abortive, consequently on the early loss of its most powerful and distinguished Patron, on the failure of its funds, and on various and unforeseen and untoward events, to which it were nugatory otherwise to refer than as a Source of future Experience.

That the suspension of this Institution has not only deeply injured your Memorialist in his circumstances, but is universally felt to be a subject of public Disappointment, Inconvenience and Regret, which can be effectually remedied only by the prompt and benevolent Interposition of the Colonial Government.

That it was hoped the Establishment of a free Grammar School, or Collegiate Institution, in Sydney by the Church and School Corporation might speedily meet the Public Exigency; but that it is now understood that even in this respect considerable Delay must be anticipated.

Your Memorialist has, therefore, engaged and has determined to throw open Mr. Lord's capacious Rooms in Macquarie Place for the reception of "One hundred Youths," to be instructed in Commercial, Mathematical, and Classical learning, on conditions adapted to the respective circumstances of the several Applicants for Admission.

But, as the unsupported individual Exertions of your Memorialist can scarcely be supposed adequate to the suitable maintenance of such an Establishment, and of its necessary Assistant Masters, your Memorialist has been prompted by several enlightened and highly respectable Gentlemen, who desire to see his beneficial views accomplished, to crave the Aid of the Colonial Government in such manner and to such Extent, as may ensure the success of the proposed Undertaking, comprising incalculable present and future Advantages to the Community.

For which aid, therefore, Your Memorialist most respectfully appeals to Your Excellency's benevolent consideration and paternal feelings of solicitude for the Advancement of these Colonies in Literature, in good morals, and in such Arts and Liberal Sciences, as may most effectually promote and confirm their Improvement and Prosperity.

And Your Petitioner, as bound in Duty and Gratitude, will pray, etc., etc., etc.

L. H. HALLORAN.

Sydney Grammar School,

18th January, 1827.

1827.
3 Feb.

[Sub-enclosure No. 4.]

COLONIAL SECRETARY MACLEAY TO L. H. HALLORAN.

Sir, Colonial Secretary's Office, 22nd January, 1827.

Refusal of
assistance by
government.

I have received and submitted to the Governor your Memorial of the 18th Instant, soliciting the aid of the Colonial Government in such a manner and to such extent, as may ensure the success of the Establishment, which you intend to commence for the reception of one hundred boys to be instructed in Commercial, Arithmetical and classical learning; and, in reply, I am directed to inform you that His Majesty's Government having made such provision, as it has considered necessary for the Education of Youth in the Colony, it is not in His Excellency's power to entertain your application.

I am, &c.,

ALEX. MCLEAY.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch marked "Private," per ship Marquis of Huntly; acknowledged by under secretary Hay, 13th July, 1827.)

My dear Sir,

Sydney, 3rd February, 1827.

Immoral
conduct of
R. Crawford.

I have forwarded with my Despatch, No. 10, a Letter from Mr. Crawford, appealing to Lord Bathurst on the subject of his resignation as Chief Clerk in the Office of the Colonial Secretary. He has shewn great folly in thus obliging me to mention a circumstance, injurious to his moral character, which I was not disposed to Communicate. Some time after my arrival here, a Man made a formal Complaint to me that Mr. Crawford had seduced his Wife, that she had abandoned her Children and was then living at his House in the Country.

I immediately requested Mr. McLeay, in whose office he was employed, to warn him, if he persisted in keeping the Woman from her family, that I should feel myself called on to mark my disapprobation of such proceeding. I then understood she would be immediately removed. But the Husband, formerly a Sergeant, soon after repeated his Complaint, and stated, though Mr. Crawford had sent his Wife into Sydney, he had taken a House for her, where she was soon after Confined. As my remonstrance had failed, I could only inform the Man that the Law was open to him to prosecute Mr. Crawford. But I believe he had not the means of doing so. You will see from this that Mr. Crawford's Continuance in Office was not very desirable.

I remain, &c.,

RA. DARLING.

GOVERNOR DARLING TO COMMISSIONERS OF THE NAVY.

1827.
3 Feb.

(Despatch per ship Marquis of Huntly.)

Gentlemen,

3rd February, 1827.

I have the honor to transmit for Your information the accompanying Copies of Letters from Mr. Harrison, the Master of the Convict Ship Speke, the Deputy Commissary General, and the Acting Superintendent of Police, respecting a quantity of Government Biscuit, found Seereted on board that Ship, in order that the Master may be dealt with as may appear proper in this case.

Report re
master of
ship Speke.

I have, &c.,

RA. DARLING.

[Enclosures.]

[Copies of these papers are not available.]

GOVERNOR DARLING TO MR. E. BARNARD.

(Despatch per ship Marquis of Huntly.)

Sir,

3rd February, 1827.

I have the honor to acquaint You, in reference to Your Letter of the 25th of July last, that Richard Pollington, the person therein alluded to, left this Colony for England a few months since, having, as I am informed, been in very distressed circumstances and in Jail for some time previous.

Report re
R. Pollington.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 15, per ship Marquis of Huntly; acknowledged by Viscount Goderich, 19th July, 1827.)

My Lord,

Government House, 4th February, 1827

4 Feb.

I had the honor to inform your Lordship in my Dispatch, No. 95, of last year, that I had equipped an Expedition, in consequence of your Lordship's Instructions, for the purpose of establishing Settlements at Western Port and King George's Sound. The Brig Amity, in which the Troops for the latter place were embarked, having been obliged to put into Van Diemen's Land, was necessarily delayed in reaching her destination, and I have not yet been informed of her arrival.

Expeditions
sent to
Western port
and King
George's sound.

His Majesty's Ship Fly and the brig Dragon having returned from Western Port, where a Settlement* was established on the 12th of December, two miles to the eastward of Red Point, which is situated on the Eastern shore of the Port, I do myself the

Foundation of
settlement at
Western port.

* Note 22.

1827.
4 Feb.

honor to transmit, for your Lordship's information, copies of the Reports, which I have received from Captain Wetherall of the Fly, and Captain Wright of the Buffs, containing details of their respective proceedings and observations, with sketches of Western Port, as referred to in their respective Reports.

Adverse reports
on country at
Western port.

It will be seen by Captain Wright's Report, No. 3, who was more immediately charged with ascertaining the nature and capability of the Country with a view to its fitness for Colonization, as also by Captain Wetherall, that the local circumstances of Western Port do not hold out any inducement to Settlers. Extensive mud flats prevent an approach to the shore except at High water, and an impervious Swampy Brush or Serub, as it is esteemed, appears to preclude all access to the interior of the Country. I do myself the honor to transcribe the following concluding passage of Captain Wright's report, vizt.

"The very small quantity of good land, in the neighbourhood of the Settlement, that I have been able to discover, and the sterile, swampy and impenetrable nature of the country, surrounding Western Port to a great extent, lead me to believe that it does not possess sufficient capabilities for Colonization on a large scale."

W. H. Hovell
to examine
neighbourhood.

It only remains for me to state that, Mr. Hovell having been left at the Settlement with the Horses and Establishment attached to him for the purpose of exploring the country, should it be found practicable, it will not be in my power to form any opinion, as to the advantage of retaining it, until I am informed of the results of his proceedings. I beg to be honored with your Lordship's commands, whether, in the event of his not being able to open a passage to the interior of the country, it is your Lordship's wish that the Settlement at Western Port should be continued. The Situation is not favorable for a penal Settlement.

Testimony in
favour of F. A.
Wetherall.

I feel myself called on, from the circumstance of Captain Wetherall appearing to have lost an opportunity of obtaining rank* by his absence on the above service, to state to your Lordship that this Officer has on all occasions, since his employment on this Station, evinced the utmost zeal in forwarding the public service; and that he not only volunteered to conduct the Expedition to Western Port, but detached one of his Lieutenants in charge of the Vessel sent to King George's Sound, and has completed the service, on which he was himself employed, in a manner highly creditable and satisfactory.

I have, &c.,
RA. DARLING.

* Note 23.

[Enclosures numbered 1 to 5.]

1827.
4 Feb.[*These enclosures were as follows:—*

No. 1. Captain Wetherall to Governor Darling, 27th December, 1826.

Reports on
Western port.

No. 2. Captain Wetherall to Governor Darling, 24th January, 1827.

No. 3. Captain Wright to Colonial Secretary Macleay, 26th January, 1827.

No. 4. Report on Western Port by Captain Wetherall.

No. 5. Chart of Western Port.

The first four documents will be found in a volume in series III, and the chart in the volume of charts and plans.]

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 16, per ship Marquis of Huntly.)

My Lord, Government House, 5th February, 1827.

5 Feb.

I have the honor to transmit, agreeably to the Orders contained in your Lordship's Dispatch, dated the 22nd of August, 1825, No. 17, a list of the names of those convicts, who are supposed to have escaped from this Colony during the year 1826; and I have further the honor to acquaint your Lordship that a regular series of the Sydney Gazettes for the last half year has been forwarded to the Secretary of State for the Home Department.

Return of
escaped
convicts.Transmission
of issues of
Sydney Gazette.

I have, &c.,

RA, DARLING.

[Enclosure.]

[This return contained the particulars relating to eleven convicts. It was signed by Fredk. A. Hely as principal superintendent of convicts, and dated 15th January, 1827.]

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 17, per ship Marquis of Huntly.)

My Lord, Government House, 6th February, 1827.

6 Feb.

I have the honor to transmit a list of the Prisoners of the Crown, who have been recommended as deserving the indulgence of having their Families sent out; and I beg leave to submit the same in order to their being forwarded as opportunities offer, should your Lordship see no objection thereto.

Families
of convicts.

I have, &c.,

RA, DARLING.

[Enclosure.]

[A copy of this return is not available.]

1827.
6 Feb.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch marked "Separate," per ship Marquis of Huntly.)

My Lord, Government House, 6th February, 1827.

Monthly
returns
of troops.

I have the honor to transmit for your Lordship's information the Monthly Returns for October and November last of the Troops, stationed in this Command.

I have, &c.,

RA. DARLING.

[Enclosure.]

[Copies of these returns are not available.]

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Marquis of Huntly.)

My dear Sir, New South Wales, 6th February, 1827.

Despatch
acknowledged.

I was not favoured with your Letter of the 14th of June until the 26th of November; since which time, a variety of important matters have pressed so forcibly on my attention that I have not had it in my power to consider the subject, as I could have wished.

Advantages in
formation of
a civil service.

I am quite satisfied, however, that the establishment of a Civil Service would be of the greatest advantage to this Government; and it appears to me that it admits of a more easy and simple arrangement here than almost anywhere. In a Climate, such as the East Indies, where the health of Europeans is generally soon impaired, it becomes necessary to make provision for the early retirement of the officers of the Government. This is wisely increased in proportion as they are enabled to prolong their Service; and thus encouragement is judiciously held out to the experienced Servants to continue in the hope of obtaining a more ample pension. The reward, in this case, is with a view to retirement to England, where enjoyment and renovated health are looked for. *Here*, the reward ought to induce residence and Settlement (a change of Climate, not being necessary to Health), which would materially benefit the Colony by increasing the respectable Class of Society; and many of the Officers would no doubt encourage their friends and connexions to come out, and try their fortunes.

Convicts
employed
as clerks.

The system here, probably arising from necessity, from the nature of things, has been pernicious in the extreme. When I arrived, there was hardly a Clerk in any of the Public Offices, even those of the greatest trust and confidence, who was not a Convict.

In the office of the Colonial Secretary, one of the Clerks had been *thrice* transported. I have directed the removal of these Clerks, as competent Free Men of character can be found to replace them.

But the difficulty is great in procuring them, as it is soon discovered that the possession of Land, with a very little Money, is the sure road to wealth. Those, who possess any means, will, therefore, either not enter the Service, or will not remain in it, while they are excluded from receiving Land. I would, therefore, recommend, as you appear to have in contemplation, that a few well educated Young Gentlemen should be sent out for the Civil Service, to be employed as Writers in the different Public Departments.

1827.
6 Feb.

Proposed
employment
of writers.

They should be provided with a Passage on board a Convict Ship, and might commence as Junior Clerks with a Salary of £200 a Year (or £250); on which, with common prudence they could live very comfortably. This Sum should be increased progressively until they attained the situation of Senior Clerk, when their salary should be raised to £350.

Salaries
proposed.

After the 1st Year to £220

2nd „ to 250

3rd „ to 300

4th „ to 350

In order to induce them to look forward to this Situation, which, if competent and deserving, they should be appointed to at the end of 4 Years Service, I would then allow them to receive two Square Miles or 1,280 Acres of Land, as a *free* Grant, subject only to the Condition of the ordinary improvements without paying Quit Rent. If considered necessary, as I think it would be, their Salary not permitting of their laying by a Sum of any Consequence, £200 might be allowed to enable the Individuals to Commence stocking their Farms. Thus would a foundation be laid, which the natural increase of Stock in this Country would rapidly extend, of obtaining an early independence, which would supersede the necessity of Pension; and the Govern't would reward its Servants at a very trifling Expence, and at the same time benefit the Colony in an important degree.

Land to be
granted after
four years'
service, with
a gratuity.

To proceed:—At the expiration of two years more, that is, of 6 Years Service, I would give the Individual another square Mile, or 640 Acres, on the same condition as the former; and, on Completing 7 Years Service, I would add a fourth, making the whole amount 2,560 Acres.

Additional
grants for
extended
service.

This progressive advance would probably be the means of insuring the Services of a great proportion of the Writers for 7 Years. Those, who had no particular taste for Agricultural pursuits would Continue in the Service, leaving the management of their Estate to an Agent; while others would retire to

1827.
6 Feb.

superintend their property, which would be desirable in order to make room for those whom the Government might wish to send out and provide for.

Principles
involved.

This is a mere outline, which I have not had time to fill up; but it will not be difficult to complete it, so as to answer fully the purpose intended. It will be found to hold out *more* than was proposed. If I understand the proposition, it was,

1st. To provide the Government with competent Persons for its Service;

2nd. To make the necessary Provision for those Persons on their retiring from the Service.

Advantages
of proposals.

If judiciously acted on, it will affect this at very little expence to the Government; and the Colony will, at the same time, be benefitted in proportion to the number of respectable Men introduced into it, either as Officers of the Government, or Settlers, or both.

Free grants
proposed for
civil servants.

While on this subject, I will take the liberty of suggesting a Measure, which I have for some time past been desirous of submitting to Lord Bathurst, which is that the Grants to the Officers of the Government should be free Grants, not subject to the payment of Quit Rent. The reward of Services would thus be distinctly marked, and the loss to Government would be too inconsiderable to merit attention; the Quit Rent on 4 Square Miles or 2,560 Aeres does not amount to £20 a Year. At present, anyone, who can Command a little Capital, obtains Land. The Income of Officers is admitted as Capital, and thus they are placed on the footing of every Common Applicant. A *Free* Grant would be a Boon, a sort of Heir-loom, which many would be proud to hand down to their Posterity. I would suggest also that a scale should be established.

There should be a distinction in the quantity of Land given to the higher Officers and those of inferior station.

Proposed
graduated
land grants.

The Officers of the highest Rank, that is, the Lieut't Governor, the Judges, the Colonial Secretary, (I would not include the Archdeacon, the Church having already so large a portion of the Territory) might, I think, after Five or Six Years Service, be allowed Six or Eight Square Miles, receiving Four Square Miles at the end of the three first Years, and so on progressively, Six, 3,840 Aeres; Eight, 5,120 Aeres; others, *Four*, which latter number are now given alike to all, a smaller quantity being of little or no use to those who have any Number of Cattle.

It is no doubt beneficial to the Colony to give Land to those, who have the means of Stocking and improving it; and this is insured when the Heads of Departments are Grantees.

What I have now proposed should be considered purely as a matter of favour depending on a Zealous support of the Government; a check of this nature in many cases may prove both useful and expedient. I shall be gratified if these Hints can be turned to account in any arrangement, which you may have in Contemplation. The measure will, I think, be found as efficacious as that pursued in India, by inducing Young Gentlemen to enter the Service of the Colonial Government; and the details require no machinery to put the measure in progress. Should any thing worth Communicating occur to me hereafter on the subject, I shall not fail to inform you; and I will forward by the next opportunity a scale according to my view of the Rank of the several Officers.

1827.
6 Feb.

General
observations.

I remain, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HORTON.

(Despatch marked "Most Private and Confidential," per ship Marquis of Huntly.)

New South Wales, Paramatta,

My dear Sir,

6th February, 1827.

I enclose you the Sydney Gazette of the 31st of last Month, as it Contains an Article on the last Page* on the subject of the Press in India. The measure, to which it alludes, is I perceive similar to that proposed to be adopted here, and it appears to me to furnish an additional Argument for your doing at Home, whatever may be considered necessary for the better regulation of the Press of this Colony. Mr. Forbes appeared always averse from the measure, and I had reason to think would not have certified the Bill, had it been brought forward. Having been employed here the last three or four days preparing my Despatches, I have not had an opportunity of seeing him; but I understand he appears to be much gratified at the Correspondence of the opinions of the Bombay Judges with his own. It is, however, evident that the Cases are by no means similar. New South Wales must be compared with Calcutta, not Bombay. Calcutta had suffered from a licentious Press, New South Wales does so at present. Bombay is still free from this evil; therefore, what was necessary for the restraint of the press at Calcutta is necessary for the Press of this Colony, and even more, as will be seen, when the nature and Composition of this peculiar Community is considered. Nothing is more easy than to irritate people against those, who keep them in subjection, no matter whether it proceeds from duty or caprice; and this is evidently the object of the Papers at present. Colonel Arthur sent me up

The problem
of regulating
the press.

* Note 24.

1827.
6 Feb.

Objections of
F. Forbes to
legislation
re press.

lately the Drafts of two Bills, which had been prepared at Van Diemen's Land under similar Instructions, to those I was furnished with, in order that the two Governments may unite in the same measure of restraining the Colonial Press. I shewed them to Mr. Forbes, who, not concurring in the expediency of what was proposed, said, if anything were to be done here, he should recommend the enactment of the Law as it stood in England. I had before this written Home on the subject, and therefore did not think it necessary to press the matter. You will understand that my mentioning this is merely to furnish an additional reason for your doing what is necessary, and I beg it may be Considered strictly Confidential.

Criticism of
regulations
re tickets
of leave.

You will see a Notice, in the first Page* of the enclosed Gazette, on the subject of "Tickets of Leave." I found it necessary to point out distinctly the advantage of the present Regulations, with reference to the Prisoners, over the former, in consequence of the exertions, which had been used by the "Monitor" and the "Australian" to persuade these people that the new Regulations have been framed with a view of debarring them altogether from any chance of obtaining Tickets of Leave; and I understand the Australian has had recourse to a mis-statement, which is its common practice to prove that the information in the Notice is without foundation.

Criticism in
the *Monitor*.

You will perceive by the "Monitor" of the 3rd inst.,† which I enclose, that it has taken alarm at a Note (a very injudicious one certainly), written to the Editor by Mr. Harrington of the Colonial Secretary's Office, and has written a long Article on the subject of a Free Press, with reference to the nature of this Government.

Adverse
criticism of
government
policy.

These Papers care not what they assert; they speak without any attention to truth or consistency. You will observe, with respect to calling in the *Mechanics* (who were out on hire, but never paid for), tho' for the purpose of being assigned, that even this is made a grievance. Hitherto the Complaint has been that a Mechanic could not be obtained without paying a *Tax*; now their being withdrawn for the purpose of being assigned without any charge being made for them is a greater grievance than the former. Everything forsooth is done on the principles of Military Discipline without Consulting any one. In another part of that Paper, the "Chamber of Commerce" is stigmatised as being subservient to the views of Government. I have observed for some time past that both the *Monitor* and the "*Australian*," particularly the latter, have been labouring hard to ridicule and cast an odium on the Boards and Committees, which have been

* Note 24. † Note 25.

assembled, in order to detach those Gentlemen from the Government, who have been employed as Members. No means, however infamous, are neglected which may be likely to shake the Government, or rouse the Prisoners and the people (I might add the Military) into opposition and hostility. I remain, &c.,

1827.
6 Feb.

RA. DARLING.

P.S.—I must request your attention particularly to the Article* in the *Monitor* on the Press, which I have alluded to in this Letter, as the Evil attending it under present circumstances is pretty evident from the shewing of the Parties themselves.

Articles in
Monitor and
Australian.

Having repeatedly adverted to the *Australian*, I enclose four numbers† of that Paper (the 13th, 27 and 30th of December, and 27th of January) which Contain some very pretty specimens, being *marked* for more easy reference, of the style that Paper has lately assumed.

[Enclosures.]

[One issue each of the "*Sydney Gazette*" and "*Monitor*" and four issues of the "*Australian*" newspaper were enclosed.]

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch marked "Private," per ship Marquis of Huntly.)

My dear Sir, New South Wales, 6th February, 1827.

As I have alluded to Mr. Wm. Wentworth, in some of my late Letters, as appearing desirous to lead the Public and degrade the Government on all occasions, I cannot perhaps furnish a better proof of the latter than by sending you the enclosed Copy of a Letter (which has only just now been communicated to me) to the Acting Attorney General, written in Mr. Wentworth's hand though signed by a Person of the name of Levy. This Man, who is of the lowest Class, having commenced erecting a Wind Mill in the Centre of the Town of Sydney on Ground, to which he has no claim, the Attorney General in the usual course was instructed to desire he would desist; to which he sent the answer drawn up by Mr. Wentworth. The style and tone of the Letter speak for themselves, and shew the object in a manner not to be misunderstood. It is not, however, singular except in the degree of its intemperance, a Mr. Daniel Cooper, an Emancipist, having lately written an extremely impertinent Letter to the Colonial Secretary respecting a Grant of Land, which he wished to obtain for his Son-in-law. These People, being unable to correspond, put themselves, when their interest is in opposition to the Government, into the hands of Mr. Wentworth, or some other Lawyer, who avail themselves of the opportunity of insulting the Government.

Ambitions of
W. C.
Wentworth.

Clients of W. C.
Wentworth.

* Note 25. † Note 26.

1827.
6 Feb.

Wentworth's
methods.

Difficulties of
government
from want of
efficient law
officers.

Mr. Wentworth speaks, as he wrote when Compiling his Book,* of the Independence of the Colony, and compares it to the situation formerly of America and the probability of its being driven, as America was, to shake off the Yoke. In short, he is anxious to become the "Man of the People"; and he seems to think the best means of accomplishing this is by insulting the Government.

You will now be enabled to judge of our situation without one Law officer Capable of conducting a Prosecution, in which the Character of the Government requires to be supported. Though I have mentioned, in a former Letter, that the "Australian" is to be proceeded against for Libelling the Chairman of the Quarter Sessions, Mr. Moore, the locum tenens of the Attorney General cannot speak, and, when called on, merely brings the matter forward. Mr. Holland, if he were acting, would not remove this embarrassment as he does not appear capable of expressing himself in an intelligible manner, even on common subjects. I honestly confess to you I do not anticipate any relief to our difficulties by the arrival of Mr. Baxter. The Attorney General to be efficient must be an able and experienced Lawyer. Conceive for a moment the task Mr. Baxter will have to perform. If he fail, and how can he succeed, the field will remain in possession of Mr. Wentworth and Dr. Wardell, and the Government will be worsted in every Contest.

I remain, &c.,

RA. DARLING.

[Enclosure.]

B. LEVEY TO W. H. MOORE, ACTING ATTORNEY GENERAL.

Sir,

George Street, 30th January, 1827.

Protest of
B. Levey
against
opposition
to erecting
windmill.

It is not true that I have ever had any notice to discontinue the building of the Mill on my premises, although it has been notorious to the Governor and the whole Colony that this Building has now been in progress for upwards of nine months. The enclosed certificate from my Neighbours, who are most interested in the abatement of this nuisance, if it be one, will shew that they do not view it in this light; and I can only say that, if it be a nuisance, the Government Windmill is an equal nuisance; and I will take care shall meet with the same fate as mine. I decline furnishing you with the particulars of my Title to the Yard, upon which this Building is being erected. I believe it to be as good a title as any in the Town, and I will take care to defend it, if it be sought to be impugned. If this notice had been given me in due time, I might have desisted. To desist now would be next to ruin; and, if the Government are really

* Note 27.

so anxious about the Lives of His Majesty's subjects, as is pretended, let them pay me for their default in not giving me notice sooner, and I will then leave off.

I am, &c.,

B. LEVEY.

1827.
6 Feb.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 18, per ship Marquis of Huntly.)

My Lord,

Government House, 7th February, 1827.

7 Feb.

I have the honor to transmit, in conformity to the Instructions contained in your Lordship's Dispatch of the 18th of March, 1825, No. 26, a Return of the Tickets of Leave, which have been granted during the last year.

Annual return
of tickets of
leave.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

[*This return detailed the particulars of the issue of one hundred and nineteen tickets of leave.*]

[Enclosure No. 2.]

[*This was a copy of government and general orders, dated 7th November, 1822; see page 81, volume XI.*]

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch marked "Secret and Confidential," per ship Marquis of Huntly.)

My dear Sir,

New South Wales, 7th February, 1827.

It being understood that it is the intention of Mr. Bowman, the Principal Surgeon, to retire from the Service at no very distant period, I avail myself of this information to request that a Competent Person may be sought for in time as his Successor. I should hope Lord Bathurst would permit Sir James McGregor, the Director General, to select a Medical Officer of Rank for this situation. The Service of a Competent Person accustomed to the Conduct of an Establish't of this nature on an extensive scale would be most important; and the Army appears much more likely to furnish such a one than the Navy. I must, however, beg that Dr. McLeod, who was here with Sir Thomas Brisbane, may not be sent out. From what I understand of his general habits, he is not the description of Person we require, and I am bound to state that his Appointment to this Establishment appears highly objectionable.

Selection of
principal
surgeon.

It has occurred to me that an arrangement might be conveniently made for the placing the Civil and Military Hospitals under one Person. At all the Out Stations, the Troops are attended by the Colonial Surgeons, though in Sydney the Establishments are distinct.

Proposed union
of civil and
military
medical
services.

1827.
7 Feb.
Custody
of stores.

The Stores, however, should be kept separate, which they of course would be; and the Appointment of an Apothecary, as proposed in my Letter of the 28th of July last, would answer this purpose.

Proposed
appointment
of deputy
inspector of
hospitals.

It has appeared to me that a Deputy Inspector of Hospitals would be a suitable Person. The Military Command alone is sufficiently considerable to justify such an Appointment; and, by uniting it with the Civil under one head, the Expence of course would be much less than if a double Superintendence were to exist.

Revision of
salaries of
surgeons.

The Pay of the Civil Medical Department is now under revision; and the Board, I understand, is of opinion that the Salary of the Principal Surgeon cannot be fixed at a less Sum, with reference to other Appointments, than £800 a Year, in which I fully concur, while this Sum, in addition to his Half Pay, would, I conceive, be quite sufficient for a Deputy Inspector of Hospitals having charge of both the Civil and Military Establishments.

I beg that you will recommend this arrangement to the favourable Consideration of my Lord Bathurst. I am satisfied it will be found as efficient and economical as any that can be adopted.

I remain, &c.,

RA. DARLING.

P.S.—The Medical Officer selected for the Superintendence of the Hospitals might be sent out in the first instance to take charge of the Military, and afterwards be appointed to the Civil Hospital on Mr. Bowman's retiring.

R.D.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 19, per ship Marquis of Huntly; acknowledged by Viscount Goderich, 14th July, 1827.)

8 Feb.
Pardons for
convicts.

My Lord, Government House, 8th February, 1827.

I have the honor to transmit to your Lordship the accompanying Returns of persons, recommended to receive Conditional and Absolute Pardons during the year 1826, and request that the cases of the following Individuals (the Instruments of Pardon being enclosed as required by the 35th clause of the Act of 4th George 4th, chap. 96) may be humbly submitted as deserving His Majesty's elemeⁿcy, vizt.

Israel Chapman, Absolute Pardon.

Henry Russell, Conditional Pardon.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

[This instrument of absolute pardon for Israel Chapman was in the usual form, and dated 10th February, 1827.]

1827.
8 Feb.
Enclosures.

[Enclosure No. 2.]

[This was a memorial from Israel Chapman, dated — July, 1826, soliciting a pardon.]

[Enclosures Nos. 3 and 4.]

[These were two returns, giving particulars of one conditional and two absolute pardons.]

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch marked "Private and Confidential," per ship Marquis of Huntly.)

My dear Sir, Sydney, 8th February, 1827.

I will not send off my Dispatches without adding a few words in reply to your private Letter of the 19th of July last on the subject of our two Judges. If they possessed even tolerably good natural Constitutions, that number would be quite sufficient for the duties, they have to perform at present; but Mr. Forbes's Health does not permit of his making any continued exertion, and Mr. Stephen is infirm. I perceive, by the Official Letter notifying his Appointment, that he is designated "Second Judge" of the Supreme Court. I apprehended that it might have been intended by this to give Mr. Stephen precedence, in order to his succeeding in the event of the retirement of the Chief Justice. But I perceive it is mentioned in your Private Letters that another Judge will be appointed with a view to his replacing Mr. Forbes. Such an arrangement is no doubt necessary, as Mr. Stephen would hardly wish to undertake the Duties of so arduous an office, and they could not in justice be imposed upon him. As to Mr. Holland's Appointment as Puisne Judge, I entreat you not to think of it. He is totally unfit for the station.

Judges of
supreme court.

Incapacity of
J. Holland.

I remain, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch marked "Private," per ship Marquis of Huntly.)

My dear Sir, Sydney, 8th February, 1827.

I am bound in justice to Captain Wetherall to trouble you with a few words in reference to his Case, as alluded to in my Despatch respecting the Settlement at Western Port.

Supposed loss
of promotion by
F. A. Wetherall.

1827.
8 Feb.

Supposed loss
of promotion by
F. A. Wetherall.

Shortly after his departure on that Service, Commodore Sir James Brisbane died. The Senior Captain here appointed the Honble. Captain Dundas to the Warspite, and a *Lieut't* to succeed Captain Dundas in the Command of the Volage; the Lieutenant cannot, I understand, be confirmed, as the Volage is a Post Ship; and Captain Wetherall, who is an old Commander, appears to have lost the promotion by having unluckily volunteered his services to carry into effect Lord Bathurst's Instructions, which, I have stated in my report, he succeeded in doing in a most satisfactory Manner. I am aware it is not desirable to interfere with arrangements of another Service; but it may be useful to Captain Wetherall to point out to the Admiralty the manner, in which he was employed; and it may benefit the Colonial Service to let those see, who exert themselves in forwarding it, that they will not be allowed to suffer by it.

I remain, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Marquis of Huntly.)

Dear Sir,

New South Wales, 8th February, 1827.

Augmentation
of veteran
companies.

I have been favoured with your letter of the 8th of August last, enclosing the copy of one from Sir Herbert Taylor on the subject of the augmentation of the Veteran Companies employed in this Government. Nothing could be more judicious than what is proposed, if augmentation only was to be considered; but, as I had some concern in the original arrangement, I may be permitted to say that nothing could possibly have succeeded less than the Establishment; still, I cannot help thinking that, if it has been formed with proper care, it would have answered. At present, it is almost totally useless. There are not half a dozen men out of the two Companies here, whose services are worth the rations they receive. Notwithstanding the liberal provision made for both officers and men, every one appeared to consider his pay in the light of a retaining fee, and that he was sent out to be provided for, to be immediately placed in some situation of emolument. It appears the misconduct of the men commenced as soon as they were on board ship; and Captain Robinson reported several on his arrival, whose conduct had been highly insubordinate and mutinous on the passage. I selected the worst, and punished him immediately as an example. The Papers then espoused their cause; and I was obliged to punish another, which appears to have checked the mutinous disposition that prevailed amongst them. But take them altogether, they

Adverse
criticism of
officers and men
of veteran
companies.

are the most drunken, disorderly, worthless set of fellows that ever existed. It appears that many of them were men of bad character, and had been flogged in their former corps. The back of the last of those, who was punished, bore evident testimony, I understand, of its acquaintance with a Cat o' nine Tails. The Establishments, to which they have been attached, are all desirous to get rid of them, preferring Convict Overseers, who, if not quite so honest, are more sober. I sent two of them with the Expedition to Western Port as overseers. They have been returned already, as they would do nothing; and the Officer reported they were breeding discontent amongst his men. I lately detached four of them to act as Mounted Police in the Interior, where they were immediately required. One of them was a Serjeant; but, before they had reached the end of the first day's march, they had lost their carbines, pistols and sabres. The Mounted Police at Bathurst and in the District of Hunter's River, whose conduct heretofore had been exemplary, and whose services had been highly important, since the mixture of these men with them, have become drunken and disorderly. I have no alternative now but to put those on Garrison duty, who are returned as unfit for other purposes. I quite despair of turning them as a body to any useful purpose. They are such incorrigible drunkards, they cannot be depended on. Colonel Arthur wrote some time ago to say he thought it would be better to put up with the first expence, and disband them at once. I am of opinion our only plan is to appoint overseers from the convicts. The *Mounted Police*, to answer the purpose required, must be selected from the Corps in garrison as hitherto. Their services in keeping down *Bushranging* is of more importance than all the Troops put together. Though they have not always succeeded in taking these people, they harass them to that degree that several in despair have surrendered even without a hope of saving their lives. If His Royal Highness the Commander in Chief would permit of a few men being transferred from the Corps here, as fit persons could be found, it would answer effectually. I should propose placing them in the Veteran Companies (designating them as a Corps or Troop of Mounted Police), and discharging the most useless of the Veterans to make room for them. Sixty Mounted Police would be sufficient under present circumstances. In this case, I would suggest that their pay should be differently regulated. I am aware that it was necessary to tempt the Veterans with high pay to induce them to come out; but it is not so with the Soldiers already here. I would, therefore, transfer them with infantry pay, being chargeable as other soldiers for their rations. When employed

1827.
8 Feb.

Adverse
criticism of
officers and men
of veteran
companies.

Proposal to
disband
companies.

Services of
mounted police.

Proposed
formation
of corps of
mounted police.

1827.
8 Feb.

Pay of
mounted police
and veterans.

as Mounted Police, their pay should be made up to that of Cavalry, and they should receive a free ration the same as the veterans.

But, when sent into quarters for misconduct, they should revert to infantry Pay, and, like other Soldiers, be charged for their rations. This would furnish a stimulus to good conduct; and it is perhaps the want of this, which has led in some degree to the misbehaviour of the Veterans, who receive the same Pay and free Rations, whether they are actively employed or kept at Head Quarters in consequence of misconduct. According to this arrangement, the Establishment will no doubt be more expensive to the Colony, as few of the men would perhaps be entitled to Pensions. But this cannot be helped. A Mounted Police is indispensable to keep down Bushrangers.

I am not aware there is a man out at this moment, which is chiefly to be ascribed to the exertions of the Mounted Police throughout the Country.

I remain, &c.,

RA. DARLING.

GOVERNOR DARLING TO MR. E. BARNARD.

(Despatch per ship Marquis of Huntly.)

Sir,

8th February, 1827.

Remittance to
colonial agent.

I have the honor to enclose to you the first of a Bill of Exchange for the Sum of £2,000 Sterling, drawn in Your favor by Deputy Commissary General Wemyss on the Lords Commissioners of His Majesty's Treasury, to meet such Expences on Account of this Government, as may be incurred through Your Agency. I request you will forward to me, from time to time, such Statements of the Expenditure of the Sums, impressed in Your hands, as will enable me to judge when it may be necessary to make further remittances.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 20, per ship Marquis of Huntly; acknowledged by Viscount Goderich, 30th July, 1827.)

My Lord,

Government House, 9th February, 1827.

9 Feb.
Statement
of annual
revenue and
expenditure.

I have the honor to transmit for your Lordship's information a statement of the Receipts and Expenditure of the Public Monies during the year 1826, together with a Paper containing observations in explanation of some of the Heads.

I thought it might be satisfactory to your Lordship to have placed before you in one view an abbreviated statement of the

Receipts on account of the Civil Government (exclusive of the Military), which of course affords a tolerably correct Estimate of the Revenue; and I have accordingly arranged it, for your Lordship's information, as follows, vizt.—

1827.
9 Feb.

Fixed Revenue	£57,357	Summary
Incidental Revenues arising from sale of Govt. property ..	4,872	of revenue.
<i>Arrears</i> of Rêvenne paid in	30,340	
Amount of Parliamentary Grant drawn for	8,283	
Sale of old Stores by the Commissariat	3,878	
British Coin rec'd	£50,000	
Since remitted to Van D. Land	8,250	41,750
Amount of Bills drawn by Depy. Commiss'y		
General	£59,322	
Expended on acct. of Pay. etc., of the		
Military	£52,236	7,086
<hr/>		
Total ..	£153,566	

A proportion of the Stores, sent out from England, have been expended; but it is not possible to ascertain the amount, as no account or statement of the cost of different Articles has been received; and the sum of £20,000, which appears under this head in the accompanying statement, is altogether conjectural, not having been founded on any data, which can be relied on.

Allowance
on account
of stores.

I beg to suggest that Bills of particulars may in future be forwarded with the Stores. Your Lordship will perceive that an *arrearage* of upwards of £30,000 has been recovered and paid into the Treasury.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

REMARKS

upon the Revenue and Expenditure of the Colony of New South Wales for the year 1826.

REVENUE.

THE amount of Duties on Imported Spirits, received in the year 1826, exceeds that collected in the former year by ..	£ 3,076 16 1	
the amount in 1826 being	£41,737 13 3	
" in 1825 ..	38,660 17 2	

Remarks on
the revenue.

Increase .. £ 3,076 16 1

which would probably have been more considerable, had there not been a falling off in the importation of West India Rum during the last six months.

The total quantities of Spirits, upon which duty was paid in 1826, are as follows:—

Rum (West India)	104,253	Gallons
Brandy	18,144	
Gin and Whiskey	9,793½	

Total .. 132,190½ Gallons.

The total quantity in 1825 was 120,405 Gallons.

1827.
9 Feb.
Remarks on
the revenue.

In the amount of Duties collected on Spirits Distilled in the Colony, there is likewise an augmentation of £ 785 4 6¼
the amount collected in 1826 being £1,866 7 10¼
" " 1825 " 1,081 3 4

The total quantity of spirits, distilled in the Colony in the year 1825, was 12,235 Gallons; in 1826, 34,585 Gallons, all of which were distilled from Sugar.

The quantity of Colonial Distilled Spirits, upon which duty was paid during the last year, is 17,435 Gallons.

The duties on Tobacco amounted in 1825 to .. £4,727 2 4
and in 1826 to .. 2,387 12 0

This diminution is partly to be accounted for in the extended production of the Tobacco of the Colony, of which there were sold, from the Government Establishments alone between the 1st of January and 30th September, 1826, 30,940 pounds. The quantity of Tobacco of foreign importation, upon which duty was paid during the above period, amounts to 32,017 pounds
and during the whole year to 47,752 pounds
The quantity of foreign Tobacco, upon which duty

was paid during the year 1825, amounted to .. 91,888 pounds

The Revenue, arising from the duty of Five per cent. ad valorem on Foreign Goods imported, has undergone a diminution correspondent with the reduction of that duty from Fifteen to Five per cent. The amount, which was collected in the year 1825, being £5,048 16 8
" " 1826 " 3,580 0 1

The value of Foreign produce, upon which duty was levied,

in 1825 was £45,824 19 8

and in 1826 " 71,600 2 4

in which ratio, it may be observed, the reduction in duty has increased the importation of Produce and Articles not the growth or manufacture of the Parent Country, and which are not paid for to any extent in products of Colonial growth or industry.

In previous statements of Revenue, the actual receipts for Market Dues, Tolls, Ferries, and other Rates, during such year, not having been separated from the collections on account of preceding years, the receipts of the years 1825 and 1826 will not admit of comparison upon that plan.

The Lettings of the Market Dues, Tolls and Ferries were, however, as follows:—

Market Dues,	1825, £ 676 13 4	1826, £ 891 0 0
Tolls and Ferries	„ £2,058 6 8	„ £1,960 0 0

EXPENDITURE

Remarks on the
expenditure.

In the previous statements of Expenditure for the Colony of New South Wales, the Disbursements on account of such Year not having been separated from the Disbursements, chargeable to the Service of preceding years, no comparative Estimate of the Expenditure of the year 1826 can therefore be adduced.

From the Abstract of Expenditure for the year, it will be seen that the actual cash Disbursements on account of the Civil Establishment amount to £77,072 0s. 9d.

It is to be observed however that this aggregate includes advances to the Trustees of the Church and School Lands to the amount of £11,600 0 0

One eighth of the revenue, since the
9th March, 1826, payable to that

1827.
9 Feb.

corporation being only £ 5,260 8 2½
leaves £ 6,339 11 9½

Remarks on the
expenditure.

to be deducted therefrom, reducing the actual ex-
penditure on account of the Civil Establishment

for the year 1826, to £70,632 8 11½

and the actual charge on account of the clergy to .. £ 8,296 19 6½

Of the item £51,106 3s. 4¼d., "Convict Establishments, Superin-
tendence and Maintenance," £45,614 8s. 4¼d. may be estimated as
the cost of victualling an average number of 4,500 convicts, who
are a charge to Government, and the sum of £5,491 15s. 0d. is the
Expence of their Superintendence, and of the outlay on account of
the various Establishments and Settlements, at which they are
retained.

In addition to both these amounts, there is to be taken to
account the value of such stores, as have been appropriated to each
service or Department, which, having been sent from England
unaccompanied by any invoice of their cost, cannot be accurately
estimated or stated in increase of the actual charge of each Service
and Department respectively for the past year.

Of the sum of £196,562 9s. 2d., which according to the accom-
panying Abstract has been disbursed for all purposes from the 1st
January to 31st December, 1826,

the sum of £84,143 15 1½ has been defrayed out of the
Revenues of the Colony.

7,858 2 6 by Bills drawn upon the Hon.
Warwick Lake on account
of the Parliamentary Grant.

and 104,560 18 6½ out of the Military chest.

£196,562 16 2

Colonial Secretary's Office,
Sydney, New South Wales,
6th February, 1827.

New South Wales, 1825.

SOURCES OF REVENUE.

			Sources of revenue.
Arrears of last years	£11,805	0 0	
Fixed Revenue	60,467	1 2	
Incidental Do.	8,454	3 8	
Receipts in aid of Do.	214,929	7 8	
Total Receipts ..	£295,655	12 6	

HEADS OF EXPENDITURE.

			Heads of expenditure.
Arrears of Expenditure last year	2,260	12 6½	
Disbursements on acct. of Civil Services, maintenance of con- victs, etc.	108,274	12 6½	
Do. Civil Establishment	71,019	15 6½	
Military Disbursements	52,599	5 11½	
	£234,153	14 1	
Balance in hands of Pub. officers, 31st Decr., 1825	61,501	18 5	
	£295,655	12 6	

1827.
9 Feb.

Statement of
revenue and
expenditure
for year 1825.

REVENUE of New South Wales for the year 1825.

EXPENDITURE.

Sources of Revenue.		£	s.	d.
Arrears of last year		11,805	0	0
<i>Fixed.</i>				
Duties on Imported Spirits		178,484.73		
" on Tobacco		21,817.47		
" ad val. on Goods		23,302.31		
Dues of Entry and Clearance		799.93		
Wharfage dues		4,927.86		
Light House dues		822.77		
Duties on Spirits distilled in the Colony		4,955.30		
Auction duties		2,562.25		
Market dues		3,008		
Slaughtering dues		975.84		
Licenses		14,845.21		
Quit Rents		1,845.21		
Rentals		13,928.58		
Hire of Convict Mechanics		6,853.27		
Total Amount of fixed Revenue in Sterling according to the Curr't rate of exchange		279,078.73		
<i>Incidental.</i>				
Sale of Crown Lands		21,493.42		
Timber		1,593.79		
Coals		2,913.02		
Stock, etc.		3,782.06		
Fines and Fees		77.14		
Loans, etc., repaid, and sundries		4,903.38		
		814.82		
		3,441.68		
Total Amount of Incidental Revenue in Sterling		39,019.31		
Carried over		80,725	4	10
<i>Fixed.</i>				
Arrears of last year		11,805	0	0
<i>Disbursements on account of Civil Services.</i>				
Convict Establishments, Superintendence and Maintenance		73,051	12	9½
Public Works, including Expense of Eng'g Dep't		13,511	16	2
Public Schools and Charitable Institutions		11,202	10	6
Miscellaneous Disbursements		5,462	7	10
Pensions		1,214	10	4
Imprest to the Settlement at Melville Island		2,808	6	8
Miscellaneous payments		53	17	1
Colonial Agent in England		909	11	2
Total		108,274	12	6½
<i>Disbursements on account of the Civil Establishments of the Colony.</i>				
Governor and Contingencies		7,907	7	1
Agent, Governor		450	0	0
Legislative Council		976	18	8
Colonial Secretary and Contingencies		2,048	14	6
Judicial, etc. do		15,015	16	2
Ecclesiastical, etc. do		10,363	9	5
Colonial Treasurer do		2,060	5	4
Collector of Revenue		4,035	0	0
Colonial Auditor		132	19	4
Surveyor's Department		4,292	10	0½
Carried over		47,883	0	6½
Total		110,535	5	1½

	£	s.	d.
Brought over	80,726	4	10
<i>Receipts in aid of Revenue.</i>			
Amount of Parliamentary Grant for the charge of defraying the Civil Establishment	16,617	0	0
Amount of Bills drawn upon the Lords of the Treasury by the Officer at the Head of the Committee, Depart't	170,899	6	1
Amount of Premiums rec'd on said bills	23,042	5	11
" Sales of Stores by Do Do	3,800	11	5½
" Receipts from other by D	507	4	2¾
	214,929	7	8
	£	s.	d.
Brought over	47,883	0	6½
Medical Department	2,468	6	3
Colonial Marine	4,369	13	5
Police	14,327	19	1
Magistracy	1,970	15	3
Total Expense of Civil Establishment.....	71,019	15	6
<i>Military Disbursements.</i>			
<i>Ordinary.</i>			
Army Ordinaries and Allowances	27,121	6	1
Pay of Commiss Dep't. do	5,037	16	4½
Pay of Branch	580	2	4
Supplies of Provisions, etc.	32,739	4	9½
Fuel and Light	12,007	1	0½
	841	18	9
Defrayed by bills on H. M. Treasury Expenses paid out of the Colonial Revenue	45,588	4	7½
	269	10	11
Total Amount of Ordinary Military Dis'b'c	45,857	15	6½
<i>Contingent.</i>			
Army Contingencies	852	4	1½
Commissariat do	2,826	2	1
Chelsea Pensions	2,439	13	0½
Ordnance do	156	19	6
Defrayed by bills on H. M. Treasury Expenses paid out of the Col'l Revenue	5,422	14	7½
	1,318	15	10
Total amount of Contingent Mil'y Dis'b's	6,741	10	5½
Balance in the hands of Public Officers, 31 Decr., 1825			
	£	s.	d.
	295,655	12	6

1827.
9 Feb.

Statement of
revenue and
expenditure
for year 1825.

1827.
9 Feb.
Estimated
revenue and
expenditure
for year 1826.

[Enclosure No. 3.]

A GENERAL APPROXIMATIVE ESTIMATE of the Revenue and Resources, of the Expenditure of the Colony of New South Wales from the 1st January to the 31st December, 1826, distinguishing the Arrears of Revenue received and Expenditure defrayed during that period on account of the last or former Years, and shewing the Net Revenue and Expenditure of the Year 1826, arranged under the several Heads of Return, required by the Instructions of H. M. Secretary of State for the Colonies, as far as the same is practicable.

Revenue and other Resources.		Expenditure.	
Arrears of Revenue of last year	£30,340 15 3½	Arrears of Expenditure of last year	£7,600 9 8½
Fixed Duties on Imported Spirits	41,737 13 3	Civil Establishment—	
on Spirits distilled in the Colony	1,866 7 10½	The Governor in Chief and Private Secretary, Clerks, etc.	£4,933 6 5½
on Tobacco	2,387 12 0	Lieutenant Governor	721 5 0
on Foreign Goods &c. ad val.	3,580 0 1	Legislative Council	700 11 2½
Dues of Entry and Clearance	150 19 0	Judicial and law Establishment, including Sheriff	13,462 2 8½
Wharfage Dues	1,249 6 0	Clergy, including advances to Church Corporation	14,636 11 4
Auction Duties	558 19 3½	Colonial Secretary and Establishment	4,373 19 11
Licenses	3,081 11 5	Auditor of Colonial Accounts and Establishment	234 5 9
Market Dues	378 2 4½	Colonial Treasurer and Establishment, Naval Officer per Centage on Revenue collected	1,386 14 2½
Slaughtering Dues	100 0 7	Surveyor of Distilleries and Establishment	2,585 18 7
Light House Dues	182 18 6	Bonded Stores	781 9 5½
Quit Rents	140 0 0	Supt. of Govt. Slaughter House	133 6 8
Fees of Office, etc.	1,943 10 1½	Surveyor of Crown Lands and Establishment	75 0 0
Amount of fixed Revenue	£57,357 0 5½	Commissioners for apportioning the Colony	3,066 7 0½
Incidental—Tolls and Ferries	465 0 0	Medical Establishment	902 15 4
Rentals	188 2 5½	Engineer Department and Inspector of Roads and Bridges	2,231 8 1½
Hire of Convict Mechanics	303 15 4	Colonial Store Keeper	4,573 18 1
Charges for use of Government Heaving down Place	95 8 0	Colonial Store Keeper	56 5 0
Sales of Cedar cut on Crown Lands charged at ¼d. per foot on importation into Sydney	573 17 4	Police of the Colony, including Magistrates who receive Rations	3,874 8 1½
of Coals at Sydney	319 19 9		18,342 6 10½
of Coals at Newcastle	2,926 7 0½		
of Crown Stock, etc.			
Amount of Incidental Revenue	4,872 9 1½		
Total Amount of Fixed and Incidental Revenue for the year 1826	62,229 10 4¾		

Receipts in Aid of Revenue—
 Parliamentary Grant for the charge of
 defraying the Civil Establishment
 of the Colony from the 1st January
 to the 20th June, 1826
 8,283 15 0
 50,200 9 0
 Consignments of Specie
 Net proceeds of Bills, drawn upon the
 Lords Commissioners of the
 Treasury by the Officer at the
 Head of the Commissariat Depart-
 ment
 59,322 13 10½
 3,578 8 3½
 Receipts from other Sources per ditto
 113,401 11 2

Total Amount of Receipts in Aid of Revenue during the
 year 1826
 In addition to which, there is to be brought to account the
 Amount of Stores as per Vote of the House of
 Commons in Committee of Supply, 17th March,
 being £49,763 for the service of New South Wales
 and Van Diemen's Land. No Invoice or Notice of
 the Cost of these Stores has yet been received; but,
 taking the proportion for the latter Settlement to
 be one third the Amount chargeable to this Colony,
 may be estimated at
 which Sum, being part of the Supply granted by
 Parliament "in aid of the Revenue" of the Colony,
 ought equally to have a place here, inasmuch as,
 if the Stores had not been provided in England,
 Bills on the Treasury must have been drawn from
 New South Wales in excess of the Amount above
 stated.

Examined:—
 Wm. LATTIGOW,
 Auditor of Colonial Accounts.

Amount of Disbursements on a/c of
 Civil Establishment £77,072 0 9
 Miscellaneous Civil Services—
 Convict Establishments, Superintend-
 ence and Main'e 51,106 3 4½
 Public Schools, previous to the 9th
 March, and Charitable Institutions
 Botanical and Horticultural Establish-
 ments 811 11 4½
 193 17 8
 920 16 10½
 86 13 4
 Printing the Public Documents
 Conveyance of the Public Letters
 Miscellaneous Services and Disburse-
 ments 1,848 17 10½
 695 6 3
 Pensions in the Colony
 Pensions in England { Amt of remit-
 Colonial Agent { tance on account
 Amount of Disbursements on acct.
 Miscellaneous Civil Services 59,453 6 9
 121,685 6 2
 Total Amount of Disbursements on acct. of Civil Service...
 In addition to which the Amount of Stores expended, no
 approximation of the Value whereof can be made
 to the several Departments, but which may be esti-
 mated in the aggregate at.....
 24,000 0 0
 136,735 7 6
 Military Disbursements—
 Supplies including Transport 17,687 12 5½
 Army and Staff Pay, Allowances, and
 Contingencies 22,651 12 11½
 Commiss't Pay, Half Pay, Allowances,
 and Contingencies 6,797 10 11½
 Retired Army Pay and Pensions 3,967 14 6½
 Barrack Department 291 18 6
 Ordnance Department 62 0 0
 Miscellaneous 768 9 6¼
 33,175 3 4
 247,430 15 2½

Total Amount of Military Disbursements
 52,226 18 11½
 £246 562 16 2

Colonial Secretary's Office,
 Sydney, New South Wales,
 6th February, 1827.

1827.
 9 Feb.
 Estimated
 revenue and
 expenditure
 for year 1826.

1827.
9 Feb.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Marquis of Huntly.)

Sir, Government House, 9th February, 1827.

Return of
departures of
ex-convicts.

I have the honor to enclose "a List of Persons originally Convicts, who have been cleared out of the Port of Sydney, and are supposed to have left the Colony during the year 1826."

This document has been prepared according to a form, which appears to have been in use, though the Instructions to transmit it to the Secretary of State has not been discovered.

I have, &c.,

RA. DARLING.

[Enclosure.]

[*This list contained the names and particulars of seventy-two individuals.*]

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch marked "Private," per ship Marquis of Huntly.)

My dear Sir, New South Wales, 9th February, 1827.

Despatches
acknowledged.

I avail myself of this opportunity of acknowledging the receipt of Your Letters marked *Private* of the following dates,

14th June, *Private*; 17th July, *Private* and *Confidential*; 18th, 19th, 26th July, *Private*; and I beg to observe generally that every attention will be paid to the several subjects, adverted to. I shall reply separately to those, which require particular notice.

I remain, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch marked "Secret and Confidential," per ship Marquis of Huntly.)

My dear Sir, Government House, 9th February, 1827.

Public petition
to obtain trial
by jury and
taxation by
representation.

I have forwarded by this opportunity with my Despatches, a Petition to His Majesty, which was voted at a Public Meeting on Wednesday last,* praying to be allowed "Trial by Jury" and "Taxation by Representation." the Petitioners considering the Legislative Council inapplicable to the present Condition of the Colony.

Differences
of opinion.

The Meeting, I am informed, was numerous and was attended by several respectable Persons, principally Inhabitants of Sydney. Though uniting in the main objects of the Petition, the opinions are various with respect to the numbers of which the Legislative Council should Consist. Few, I apprehend, are so wild or extravagant in their notions, as to suppose for a moment that the

* Note 28.

Colony, in its present Condition, could furnish any thing like a Hundred Members. I understand they are less sanguine in their expectation of succeeding with regard to the Legislative Assembly, than the Trial by Jury. They seem to Consider the latter as pretty certain, but their hopes of obtaining the former appear to rest in a great degree on the exertions of Sir Thomas Brisbane, Sir James McIntosh, and the other Opposition Members, who have heretofore espoused the Cause of the Colony. Sir Thomas Brisbane's proceedings,* previous to his departure, have placed the Government in a situation of great embarrassment, from which it cannot easily be extricated. Conceiving himself ill treated at Home, he threw himself at the last moment into the Arms of the Emancipists and unreservedly espoused their Cause. He had remained here Four Years without ever having paid them any attention. In short, he shut himself up at Paramatta where he saw no one. When on the eve of his departure, to answer a Political purpose, he dined with and entertained the Emancipists, and seems to have persuaded them that their rights are only limited by their wishes.

1827.
9 Feb.

Anticipated
concession of
trial by jury.

Alleged
support of
emancipists by
Sir T. Brisbane.

This probably would have had but little effect on these People, who, after all, are not, I believe, ill disposed, if left to themselves; but it has rendered them more susceptible of the efforts of such men as Dr. Wardell and Mr. W. Wentworth, who have an object to answer, and who are ever ready to inflame their minds. The Press, formidable everywhere, is, from the peculiar Composition of this Community, extremely dangerous here. Those of a certain Class feel the degradation of their situation, and are consequently easily excited and inflamed. Several of the people, too, who have come out here to settle, have experienced disappointment.

Effect on
emancipists.

Power of press.

Their golden dreams are not realized in a moment, and every impediment is now attributed by the Papers to harsh and unnecessary restrictions; though the exertions of the local Government have been unceasing to remove, on its own responsibility, those parts of the King's Instructions which have appeared burdensome and inconvenient.

I would say, while on the subject of the Press, that the necessity of effectual restraint is every day more and more apparent. I brought the Conduct of the "Monitor" under Your Notice immediately after its establishment.† It has from the first been seditious and inflammatory in the highest degree. I was, however, unable to proceed against the Editors from the indisposition evinced by Mr. Bannister to carry on the prosecution. I have abstained latterly from a feeling of Policy, which has been already explained to you.

Necessity for
restraint
of press.

Conduct of
Monitor.

1827.
9 Feb.

Perverted
statements in
Australian.

With respect to the "*Australian*," it has, ever since the affair of *Sudds* and *Thompson*, continued to publish the most*perverted and distorted Statements of facts, and in many cases the most groundless and unfounded representations. It is evident the Editor was tired waiting for the reward, he conceived he had earned by his *honesty*; and scurrility and misrepresentation being more fruitful and more congenial to his feelings, he has resumed these, and continues to indulge his fancy apparently without apprehension or restraint. It is impossible not to perceive that, in the present state of the Press, the tranquillity of the Colony cannot be preserved. The Community is of a very peculiar description and, as in most cases, the respectable and well disposed are supine, while the Press is busily employed sowing the Seeds of discord and dissension.

Necessity for
increased
power.

The necessity of strengthening the hands of the local Government in an extraordinary degree has now become obvious. I have no desire for additional powers, further than may be necessary for the tranquillity of the Colony. Those vested in me have invariably been exercised with temper and discretion; still the Papers, availing themselves of the ease of *Sudds*, have not perhaps totally failed in producing a feeling of irritation. While on this subject it may be as well that I refer to my Private Letter to Mr. W. Horton of the 11th of December last, the subject is not altogether unconnected with the present. Mr. Mackaness, the Sheriff, is one of the principal features of that Letter; and you will see by the accompanying Paper* the situation, which he filled at the "Anniversary Dinner." He was in fact the *only* Person present, who was *invited* to the Dinner, the Company being Composed of Emancipists and their immediate Connexions and Friends.

Presence of
J. Mackaness at
anniversary
dinner.

Qualifications
necessary
for colonial
appointments.

In that Letter, I adverted to Mr. Mackaness's popularity; the above is perhaps some proof of it, and his friends, Mr. Wentworth and Doctor Wardell, will always give him the full benefit of their influence and assistance. In strengthening the hands of Government, which I cannot too strongly or too repeatedly urge, you cannot perhaps do it more effectually than by sending out, as I have recommended, Men of *respectability* and *acknowledged talent*. These should be considered indispensable qualifications to the Appointment of the Law Officers; and it is of the very first importance that every Person, hereafter appointed, should clearly understand that his retaining his situation will depend on a Zealous Co-operation with the Local Government.

You will perceive that the complexion of this Letter is different, from those I have hitherto addressed to you. It is not.

* Note 31.

however, from any immediate apprehension, so much as the dissatisfaction, which I perceive the Papers have it in their power at all times to excite. The People are taught by the Papers to talk about the rights of Englishmen and the free Institutions of the Mother Country, Many of them forgetting their actual Condition. Besides, it is evident that, altho' this is an English Colony, there is no similarity whatever in its Composition to that of England.

1827.
9 Feb.

Influence of
the press.

The free Institutions of Great Britain may be very applicable to its Inhabitants, and at the same time be extremely inapplicable to the Inhabitants of New South Wales though born in England. But their pretensions are totally inadmissible.

The Colony is still in its infancy, and is by no means prepared for such an Institution as a Legislative Assembly.

Objections to
proposed
legislative
assembly.

Men, who have to provide for their Families, would not neglect their Farms and reside in Sydney at a great expence to attend as Members of the House of Assembly. The honor and novelty of the thing might induce them to do so once; but they would not repeat it. The Members of Parliament are Men of Fortune, who are put to no inconvenience by residing in London for a period. Here the case is exactly the reverse. Where the Servants are *all Convicts*, the immediate, the Constant Superintendence of the Master is indispensable to the preservation of his Property. I am satisfied there are not three Settlers in the Colony, who would or could give up their time to the necessary attendance on a Legislative Assembly.

Those, who are anxious for Seats, will urge the matter, and will induce others to join with them; though I firmly believe the people in general are perfectly indifferent on the subject. The evil of this place is the passion, which exists, that New South Wales should be the Counterpart of England.

General public
indifference.

It is quite enough, if a Society, no matter of what nature, has been established at Home, a similar one must be introduced here; thus we have Institutions and Societies* without number, existing merely in name, without Considering that the impotency, which naturally appertains to a state of Infancy, must at present render New South Wales unfit for those Institutions, which in England are the result of its advancement and maturity.

Institutions
established.

To return to the immediate subjects of the Petition, having already put you in possession of the Proceedings of the Executive Council on the *Jury Question* by my Despatch, No. 57 of last Year, I am not aware that I can add any thing further respecting it. You will have been informed of my opinion on the

* Note 32.

1827.
9 Feb.

Proposed
enlargement
of legislative
council.

subject of the Legislative Assembly by my Letter of the 17th of December, marked Secret and Confidential, which was the result of deliberations with the Chief Justice and Mr. McLeay.

It appears by the Petition that the promoters of it would prefer that the Legislative Council should continue as at present, rather than an Assembly be formed consisting of a limited number of Members, as they conceive that such a Body would be the means of giving additional weight to the opposite Party. If it should be found necessary to increase the numbers of the present Council to Fifteen or Twenty, and I see no material objection to it, it would in that case be advisable to appoint one or two more of the Officers of Government as Members, in addition to those proposed in my last Letter on this subject. I enclose a Sketch of the Composition of the Council supposing the number to be either 15 or 20. I have already stated my opinion in this respect, should it be increased to 12, and have suggested the Appointment in that case of the Attorney and Surveyor Generals.

Measures
originated
by private
members.

I have only further to observe that permitting the Members to originate Measures would not, that I am aware of, be attended with any serious inconvenience. It would, of course, be done under certain regulations, and the privilege would no doubt be gratifying and might be the means of satisfying the Colonists.

Proposed
election of
members.

I have been desirous to ascertain whether it would be possible to devise any means of electing the Members, not belonging to Government, should an elective Assembly be pressed in the House of Commons. I mean the 8 or 12 independent Members, the Council consisting of 15 or 20 according to the accompanying Sketches.

The settled parts of the Country might perhaps without inconvenience be divided into Districts, having reference to the immediate Free Population.

The Country is so unequally inhabited that the division of Counties would not, I apprehend, afford a fair Criterion to regulate a representative Body under present Circumstances. You will of course understand that I throw out these observations *only* in the event of the Question being taken up earnestly in the House of Commons. In that case, they may not be totally useless. If I should appear urgent in my wish that you should do at Home what may be necessary to the due restraint of the Press, you will not suppose that we do not mean to act here in the Case of any Libellous matter of a serious nature appearing. The Attorney General has already been directed to prosecute the "Australian" on the part of Mr. Carter, the Chairman of the Court of Quarter Sessions, who has been attacked and exposed

Restraint of
the press.

to ridicule for the manner, in which he has performed his Public duty. The Attorney General has also under Consideration a representation from the Archdeacon on the subject of an Article in the "Australasian" of the 30th December, tending to bring the Clergy and the established religion into disrepute. Altho' highly reprehensible, I am inclined to think the Attorney General will not recommend a prosecution in this case. If he has any doubt of success, it certainly had better not be undertaken.

1827.
9 Feb.

Prosecutions
of editors.

I must not close my Letter, the subject of which relates almost entirely to the Press, without acquainting you that another Paper* is coming forward under the auspices of *Doctor Halloran*, to be called the "Gleaner." He has frequently written for the Papers both at Home and here, and writes well though intemperately. He wrote to inform me lately he was about to establish this Paper, and wished for my sanction. I replied that the Government had not hitherto interfered in such matters. This was probably intended as an overture in consequence of the Conduct of the "Australasian" and the "Monitor"; but I have no wish for his Assistance, and am satisfied that in general little is gained particularly in a Confined Society, such as this, by the Contention of News Papers. Doctor Halloran, seeing the ground taken by the "Monitor" and "Australasian," may possibly feel that he is likely to gain more by writing on the opposite side than by uniting with them. I shall not, however, enlist him or engage any one in defence of the Government. Though it may sometimes be useful, it gives importance to the Opposition Papers, and increases discussions, which otherwise would not have existed. You will, however, be satisfied with a field composed of such Men as Doctor Wardell, Dr. Halloran, and Mr. Hall, that more than ordinary circumspection will be required. I have only to hope, which I can hardly expect, that they may not render extraordinary measures necessary. You will, however, I trust rely that nothing of this nature will be resorted to, which can possibly be avoided.

Foundation
of the *Gleaner*
newspaper.

I remain, &c.,
RA. DARLING.

[Enclosure.]

SKETCH of Composition of the Legislative Council, supposing it to consist of

Proposed
composition
of legislative
council.

Fifteen Members.

Lieut't Governor; Chief Justice; Archdeacon; Colonial Secretary; Attorney General; Surveyor General; Auditor of Accounts; Six Country Gentlemen; Two Merchants.

* Note 33.

1827.
9 Feb.

Proposed
composition
of legislative
council.

Twenty Members.

The seven first Members, the same as in the Council of Fifteen, with
The Solieifor General; Nine Country Gentlemen; Three Merchants.

A Council of *Twelve* Members, as suggested in my Confidential Letter of the 17th of December, was to Consist of the

Six first Members, named for the Councel of *Fifteen*; Four Country Gentlemen, Two Merchants.

It appears to me that it is of more importance the Government should have a decided influence in a Council of a limited number of Members than in one on a larger scale. A small number could more readily Coalesce to oppose the Government, than a large; besides, beyond a certain extent, the Government could not furnish Members from amongst its Officers, and none but those, whose situation imply a necessity of their possessing a knowledge of the interests of the Colony, could I think be consistently brought forward.

It will be seen that I have omitted the Second Judge of the Supreme Court. On a more extended scale than the present, I think the Chief Justice should not be a member of the *Legislative Council*; it appears to me to be inconsistent with his situation, and I am decidedly of opinion, as I believe I have already stated, that the Archdeacon should not be a Member of either Council. The duties are incompatible with the functions of his sacred Character. He should not be placed in a situation, in which he is too often required to Vote for the death of Criminals. His being relieved from these duties would, I have no doubt, be advantageous to his Professional Character.

In venturing to give these opinions, I am bound to declare that no one could perform their duties as Counsellors with more Zeal or good will than both Mr. Forbes and Mr. Scott, and I have great pleasure in thus acknowledging my obligations to them.

R.D.

GOVERNOR DARLING TO MR. E. BARNARD.

(Per ship Marquis of Huntly.)

Sir,

9th February, 1827.

I have the honor to acknowledge the receipt of your Letters, hereafter mentioned, Vizt.

30th June, 1825—Transmitting a List of Articles embarked on board the Convict Ship "Boyne" for the use of the Church and School Establishments.

Despatches
acknowledged.

30th June, 1825—Indicating that the Sum of £13 had been paid as a fee on passing the Commission of Chief Justice Forbes as Judge of the Court of Vice Admiralty.

1827.
9 Feb.

Despatches
acknowledged.

30th June, 1825—Transmitting a Collection of the Acts of Parliament, passed during the last session.

1 July, 1825—Notifying that £93 9s. 6d. had been received on account of C. Harvey, Jane Hinks, and Mary Ovens.

20th July, 1826—Notifying that £50 had been received on account of S. B. Hill, a Convict.

5th August, 1826—Intimating that an advance had been made to Mr. Holland, on account of his Salary of £300, and that a further advance of £200 had been made on Security left in your hands.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 21, per ship Marquis of Huntly.)

My Lord, Government House, 10th February, 1827.

10 Feb.

I lose no time in reporting for your Lordship's information that the ship *Sisters*, Whaler, has just arrived from New Zealand, having re-captured the Brig *Wellington*, which had been taken possession of by the Prisoners, who were embarked in that Vessel for Norfolk Island early in the month of December last.

Re-capture
of brig
Wellington.

It appears, from the information I have hastily collected, that this Vessel had proceeded on her passage about twelve days, when it was supposed she was within a short distance of her destination. The Prisoners, being 66 in number, rose on the Guard (which consisted of a Serjeant and twelve privates) and the crew, and took possession of the Vessel. It does not appear that any act of murder or unnecessary violence was committed by the Pirates, and no lives were lost. This event appears to have taken place on the 21st of December. They immediately shaped their course for New Zealand, where they arrived on the 5th of January. The *Sisters* was then lying in the Bay of Islands and another Whaler. The circumstances of the Wellington were soon known; and Captain Duke of the *Sisters*, whose conduct appears to have been very judicious and spirited, opened a fire upon the Brig, when a number of the Pirates hastened on Shore. These were secured by the Natives on the Beach, who deprived them of their plunder and delivered them over to Captain Duke. After making the necessary arrangements and transacting the business connected with his voyage, the *Sisters*, with the Wellington in charge, sailed for Port Jackson, and arrived there yesterday afternoon.

Seizure of brig
by convicts.

Re-capture
of brig by
whalers.

1827.
10 Feb.

Cargo of brig.

The *Wellington*, in addition to the Prisoners embarked, had received supplies for Norfolk Island and a variety of Stores necessary to the repair and erection of buildings required at the Settlement. These, I understand, have been in a great measure damaged or destroyed, and a vessel will be immediately despatched with other supplies. A man of the name of John Walton, formerly a subaltern in the 48th Regiment, appears to have been the Ringleader. He was lately convicted as a receiver of stolen goods, and was under sentence of Transportation.

Convicts
to be tried
for piracy.

I have the honor farther to state that the necessary examinations will be immediately taken with a view to proceeding against the Prisoners for Piracy. The result shall be duly communicated for your Lordship's information. The *Marquis of Huntly* intending to sail in the course of the morning for England has not afforded me time to obtain more circumstantial information than I have communicated. Everything, which is material, is, I believe, stated with tolerable accuracy. I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO THE SECRETARY OF STATE.

(Despatch per ship *Marquis of Huntly*.)

Sir,

Government House, 10th February, 1827.

Transmission
of copies of
Sydney Gazette.

Conformably with my Instructions to this effect, I have the honor to transmit for Your information the *Sydney Gazettes* from the 1st January to the 10th Instant. I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship *Marquis of Huntly*.)

Sir,

Government House, 10th February, 1827.

Matron of
factory to
retire.

Mrs. Raine (late Mrs. Fulloon), the Matron of the Factory, being desirous of retiring from that situation, I request that a competent person may be selected with as little delay as possible to succeed her. She has applied to me to forward a Petition to Earl Bathurst that she may be allowed a Pension, which she mentions having received a promise of in the event of good conduct. I have, however, declined forwarding it at present in consequence of the short period of her service, which I think does not exceed three years.

I see no chance of finding a person here for the situation. If Mrs. Raine had not been a woman of extraordinary bodily strength and energy of character, she could not have undergone the fatigue she has been exposed to. An Assistant Matron will

also be required, as no one woman is equal to so extensive a charge and superintendence. There were lately about 250 women in the Factory; and two ships have just now arrived with as many more. About 140 of these have been assigned; but it is to be apprehended that no inconsiderable proportion of them will shortly be returned to Government. I mention this to point out the necessity of additional superintendence. I have much pleasure in adding that the conduct of the Establishment generally has been much improved through the exertions of the Committee of Management, which I appointed some time since; and I have every reason to expect that their exertions will be attended with more important benefits, when a few alterations in the arrangement of the building, which have been suggested for the better classification of the Prisoners, shall have been effected.

I have, &c.,

RA. DARLING.

1827.
10 Feb.

Necessity for
appointment of
sub-matron.

Improvement in
administration.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch marked "Private and Confidential," per ship Marquis of Huntly; acknowledged by under secretary Hay, 18th Jnly. 1827.)

Dear Sir, New South Wales, 10th February, 1827.

I am very desirous of receiving Lord Bathurst's Commands on being favoured with His Lordship's sentiments respecting the system, which it may be proper to pursue with regard to Norfolk Island. I laid it down, as a rule on my arrival here, that women should not be sent to that Settlement, and the few free women, who had accompanied their husbands, belonging to the troops and the people employed there, were withdrawn. My object was to hold out that Settlement as a place of the extremest punishment, short of Death. The objections to the non-admission of women are obvious. The question is, are they of paramount importance to the effect, which may be produced on the mind of the Prisoners here by Banishment without the hope of release in checking the Commission of the more serious class of crimes. No doubt the Licentious may indulge the more freely in their sensual propensities; but I am by no means satisfied that the introduction of a few women would remedy the evil. The right course of proceeding in this case is doubtful, and not easy in my opinion to be determined. Norfolk Island will soon have within it a large number of the most depraved and dissolute characters. At present, there are 115, and there are several others at this moment to be forwarded by the first opportunity.

Exclusion of
women from
Norfolk island.

1827.
10 Feb.

Reasons for
exclusion of
women.

Re-organisation
of departments.

Defective
system at penal
settlements.

In drawing the line, which I have pointed out respecting Norfolk Island, my object was to make a marked distinction between that and the Settlements at Port Macquarie and Moreton Bay. Women have been occasionally sent to these; from this circumstance perhaps in some degree and from the very injudicious course, which appears to have been adopted by the Commandants, Port Macquarie in particular has been anything but a place of punishment. Many of the prisoners liberated some time since from that Settlement, rather than work here, begged to be sent back again. It may be very naturally asked why the system has not been corrected. My hands have been more than full; the reform of every Office Department and Establishment, without one single exception of the whole Government in fact, has rendered it impossible to do what was required in every case. The machinery here is totally inadequate to such a Government as this, to which there is nothing similar under the Crown; and the exertion, which is consequently necessary, would exhaust the best energies of the most zealous. Besides, there is evidently an indisposition on the part of the Departments in general to conform to the Regulations laid down. They have been so long accustomed to act for themselves, without any attention or regard to unity of proceeding, that any attempt to establish system appears to be considered an unnecessary and burthensome restraint; and there is great difficulty in preventing the Regulations, which are made, from immediately becoming a dead letter.

I have been inadvertently led into these observations, when the object of my letter was more immediately the conduct of the Penal Settlements. If I cannot visit Moreton Bay and Port Macquarie soon myself, I must employ others to do so, as the whole system is radically defective.

Soon after my arrival here, I discovered that the Issues of *Extra Provisions* to the Prisoners at Port Macquarie under the head of *Indulgences* exceeded a thousand a year. Punishment or Example seems to have been quite out of the question; the object was to keep the Prisoners quiet by indulging them as much as possible. My own opinion is that every man at the Penal Settlements should be worked in Irons, that the example may deter others from the Commission of crime; and I shall very soon see whether this cannot be effected.

I will not close my letter without requesting your attention particularly to the question respecting Norfolk Island, with which I commenced it.

I remain, &c.,
RA. DARLING.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Guilford; acknowledged by Governor Darling,
2nd August, 1827.)

1827.
11 Feb.

Sir,

Downing Street, 11th February, 1827.

I am directed by Earl Bathurst to transmit to you the copy of an application, which has been addressed to his Lordship by the "Church Missionary Society," relative to the Grant* of 10,000 Acres reserved in their favor by Sir Thomas Brisbane, and confirmed to them in Lord Bathurst's dispatch of the 10th Instant, for the objects therein described. I further enclose a copy of the reply, which Lord Bathurst directed me to address to the Secretary of the Society, by which you will perceive that his Lordship has deemed it proper to leave to you to decide as to the expediency of substituting other Trustees for those, appointed by Sir Thomas Brisbane in the Instrument, which he had prepared. And I am to request that you will favor Lord Bathurst with your opinion on the subject, after giving to it your fullest consideration.

Land grant
to church
missionary
society.

I have, &c.,

R. W. HAY.

[Enclosure No. 1.]

THE REVEREND D. COATES TO EARL BATHURST.

My Lord, Church Missionary House, 21st January, 1827.

I am directed by the Committee of the Church Missionary Society to state to your Lordship that they have been acquainted by Sir Thomas Brisbane, late Governor of New South Wales, that, previously to his relinquishment of the Government of that Colony, he issued an Order assigning 10,000 acres of Land, situated therein, to the Church Missionary Society for the benefit of the Aborigines through the medium of the Society's Mission to that people, which Order prescribes certain conditions with a view to the attainment of the object, which Sir Thomas Brisbane had in view in issuing it. A Copy of that Order I enclose; and I am desired by the Committee to request that your Lordship would be pleased to confirm it.

Land assigned
for mission
to natives.

In considering how the benefits of this liberal Grant may be most effectually secured to the Aborigines of New Holland, the following arrangement has occurred to the Committee, which they respectfully submit to your Lordship's consideration. That the 10,000 acres of Land be vested in Seven Trustees and their heirs in this country, to be appointed by the Committee of the Church Missionary Society, in trust for the purposes specified in the Order, with power to the Trustees to appoint Agents in New South Wales, to be approved by the said Committee, to carry the Trusts into effect, and with Clauses empowering the

Appointment
of trustees
for grant.

* Note 34.

1827.
11 Feb.

Appointment
of trustees
for grant.

appointment of new Trustees, to be nominated by the said Committee, in the room of deceased Trustees, as often as the number of Trustees shall be reduced to four, and conveying and vesting the property with the new Trustees jointly with the surviving Trustees.

The object of the arrangement, thus submitted for your Lordship's sanction, is that, as the responsibility of the Trust will rest with the Committee of the Church Missionary Society, the Grant may be so made as to enable them to exercise an effective direction and controul over its use and application, so that the advantages of this beneficent act of His Majesty's Government, if Your Lordship should be pleased to confirm the Grant, may be satisfactorily secured to the Aborigines of New Holland.

I have, &c.,

DANDESON COATES, Assistant Secretary, C.M.S.

[Enclosure No. 2.]

UNDER SECRETARY HAY TO THE SECRETARY OF THE CHURCH
MISSIONARY SOCIETY.

Sir,

Downing Street, 31st January, 1827.

Letter
acknowledged.

I have received the directions of Earl Bathurst to acknowledge the receipt of your letter of the 21st instant, in which you request, on behalf of the Church Missionary Society, that his Lordship would be pleased to confirm a Grant of 10,000 Acres of Land, which Sir Thomas Brisbane, the late Governor of New South Wales, had assigned to them under certain conditions, and you further request that the Grant in question may be vested in Trustees in this Country in the manner you have pointed out.

Confirmation
of grant.

Lord Bathurst has desired me to acquaint you that General Darling, the present Governor of New South Wales, having reported the circumstances, under which the above Grant of Land was made to the Society, the consent of His Majesty's Government to the measure has been signified to him, with the understanding however that the Grant should revert to the Crown in the event of the failure of the project, in aid of which it was given to the Society. A Copy of the Instruments, by which the property in question has been made over to Trustees on behalf of the Society, has been sent home for the Information of His Majesty's Government; the provisions of which appear to be similar to those, by which a Grant of equal extent and for the same object was made to the London Missionary Society. In both cases, the Trustees of the Land have been selected from the Auxiliary Committees resident in the Colony; and as the Governor is the person who will be called upon to decide as to the fulfilment of the object, for which the Grant has been made, it

Appointment
of trustees.

appears to Lord Bathurst that he alone is the proper person to decide as to the most eligible mode of appointing Trustees. Under these circumstances, his Lordship does not consider it expedient to interfere with the arrangements already adopted on that particular point, although he will have no objection to refer the application, which you have made on the subject, for the opinion of the Governor, with a view to meet the wishes of the Society, should there appear to him to be no inconvenience likely to result therefrom with reference to the possible resumption of the Grant by the Crown at some future period.

1827.
11 Feb.
Appointment
of trustees.

I am, &c.,
R. W. HAY.

UNDER SECRETARY HAY TO GOVERNOR DARLING.*

Sir,

Downing Street, 11 Febry., 1827.

I am directed by Earl Bathurst to transmit to you the inclosed Application from Captain Daly on the half pay of the 12th Regt., whose first intention was to have disposed of his Commission under the Regulations, promulgated in the General Order of the 8th of June, 1826, but who has since determined to proceed to New South Wales as an ordinary Settler. By the accompanying letter from the Horse Guards, you will perceive that a favorable opinion was entertained by the Commander in Chief of his Services; and, as this Officer's name has also been brought under Lord Bathurst's favorable notice through other Channels, his Lordship has requested me to recommend him to your protection and for such facilities in the attainment of his objects, as you may have the means of affording to him, consistently with established Regulations.

Recommend-
ation of A. Daly
as a settler.

I have, &c.,
R. W. HAY.

[Enclosure No. 1.]

[A copy of captain Arthur Daly's letter, dated 9th February, 1827, is not available.]

[Enclosure No. 2.]

LIEUT.-GENERAL SIR HERBERT TAYLOR TO UNDER SECRETARY HAY.

Sir,

Horse Guards, 22 July, 1826.

I am directed by the Commander in Chief to refer to you, for the Consideration of Earl Bathurst, the enclosed application from Captain Arthur Daly, on the Half pay of the 12th Regiment, for a Grant of Land in New South Wales or Van Diemen's Land under the Regulations, promulgated in the General

Application of
A. Daly for
land grant.

* Note 6.

1827.
11 Feb.

Order of the 8th Ultimo. I am at the same time to request you will acquaint His Lordship that the statement of Captain Daly's services is correct, and that He is not known in this Department, otherwise than favourably.

I have, &c.,

H. TAYLOR.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 22, per ship Queen Charlotte.)

12 Feb.

Despatch
acknowledged.

My Lord, Government House, 12th February, 1827.

I omitted, when addressing your Lordship in my Despatch, No. 96/1826, to acknowledge that which I had received (No. 38/1826) by Captain Stirling of His Majesty's Ship *Success*, respecting the service in which that Officer is to be employed.

Proposed
settlement
in north
Australia.

I now avail myself of the present opportunity of doing so; and I shall not fail to render due attention to the Instructions contained in your Lordship's Dispatch. Considering the remote situation of Melville Island and the Settlement proposed to be established to the Eastward of it, I am of opinion that a vessel competent to the conveyance of supplies will be necessary at each, in order to ensure the means of communication between the two, and send, as occasion may require, to Timor. The Capture of the Brigs,* "Lady Nelson" and "Studecombe," by the Malays, of which your Lordship has been already informed, appears to me to give much additional weight to this opinion. I shall, however, not determine until I am enabled to do so satisfactorily, when Captain Stirling shall have completed the service, with which he has been charged.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 23, per ship Queen Charlotte; acknowledged by Viscount Goderich, 31st July, 1827.)

13 Feb.

Troops
stationed in
Tasmania.

My Lord, Government House, 13th February, 1827.

In acknowledging your Lordship's despatch, No. 39/1826, I beg to express my hope that your Lordship will approve of the arrangements, which I had made, soon after my arrival, for enabling Lieut't Governor Arthur to provide in a more effectual manner than heretofore for the tranquillity of Van Diemen's Land. That Garrison now consists of one complete Regiment (the 40th), Captain D'Arcy's Company of Veterans, and one third of the Company of the Royal Staff Corps stationed in this

* Note 35.

Command. These, with a due proportion of Mounted Police, will, I have no doubt, effectually answer the purpose proposed.

1827.
13 Feb.

I shall lose no time in availing myself of the means, afforded by the arrival of the Horse appointments, which have been received by the Boyne, of equipping an additional number of men for the Mounted Police, as from experience I attach great importance to the employment of these people. At the present moment, *sixty* may prove a competent force; but the necessity of progressively augmenting the number will be experienced as the population increases. Within a few days, 600 convicts, men and women, have arrived and the *Andromeda* with 200 males is daily expected. It must be unnecessary to point out that the Police Establishments of other Colonies can bear no proportion to that necessary to be kept up here, where a great majority of the population are or have been convicts. Besides, it is quite impossible to procure more, whose services can be depended on, without adequate remuneration. Thus the Police Establishment in this Colony must, so long as it retains its present character, be very extensive and expensive.

Increase in
number of
mounted police.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 24, per ship *Queen Charlotte*.)

My Lord, Government House, 14th February, 1827.

14 Feb.

I have the honor to acknowledge the receipt of your Lordship's Despatch, No. 54/1826, transmitting copy of a Memorandum containing generally the terms on which the vacant Crown Lands are to be granted. As Your Lordship's Instructions on the subject of my Despatch, No. 60/1826, may be shortly expected, it has appeared to me advisable, in order to prevent misunderstanding and confusion, to suspend for the moment acting on the memorandum above referred to, which I have the less hesitation in doing, as the persons, who have recently arrived and have been permitted to settle, are perfectly satisfied, and, in no instance that I have heard of, have they made a question as to the allowance for the maintenance of Convicts. Convicts are so necessary to the improvement and cultivation of their land that they require no boon to induce them to receive and maintain them; and the best proof of this is that the Government has not the means at this moment of satisfying the demand of the Inhabitants in this respect.

Instructions
re disposal of
crown lands.

I have, &c.,

RA. DARLING.

1827.
14 Feb.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Queen Charlotte.)

Sir, Government House, 14th February, 1827.

Despatches
acknowledged.

I do myself the honor to acknowledge generally the receipt of Despatches from Earl Bathurst as per margin,* which have arrived since the date of my Letter to you of the 29th January. I shall reply specially to those, which require it, as soon as circumstances permit.

I have, &c.

R.A. DARLING.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 25. per ship Queen Charlotte; acknowledged by Viscount Goderich, 25th July, 1827.)

15 Feb.

My Lord, Government House, 15th February, 1827.

Proposed
appointment of
J. T. Morisset as
commandant at
Norfolk island.

I have the honor to acknowledge the receipt of your Lordship's Despatches, as dated in the margin,† respecting the Appointment of Lieut. Colonel Morisset to the situation of Commandant of Norfolk Island. Were there no other reason than that which is made, the subject of my letter to the Under Secretary of State of the 10th instant, and to which I beg leave to refer your Lordship, I should depend on Your Lordship's forgiveness, Lt. Colonel Morisset being a married man, for delaying to carry into effect the orders, I have received, until I am honoured with your Lordship's sentiments and commands on the communication above alluded to.

Should your Lordship concur in the view I have taken with respect to the Settlement at Norfolk Island, the circumstance of Lieut't Colonel Morisset being married would prevent his being stationed there. But it appears to me there is another reason against his employment as Commandant, and further that his services may be rendered infinitely more advantageous than in that situation.

The reason against his employment as *Commandant* is that the rate of his salary being £600 a year would be a cause of dissatisfaction to the other Commandants, who are occasionally officers of equal Rank and receive only £182 10s. In this Government, the Officers in the Military Service derive no advantage from their Regimental situation, and Lieut. Colonel Morisset is on full pay, the same as the other Commandants. The only exception to the amount of salary above mentioned is Major Campbell's at Melville Island, who is allowed £300 a year. But

* *Marginal note.*—From No. 64, dated the 10th September last To No. 87, dated 29th October; Circular of 11 September.

† *Marginal note.*—5th Augt., 1826, No. 56; 24 September, No. 67.

that Command was formed on more extensive views than a mere Penal Settlement. It is besides very remote from the Seat of Government, and the Commandant has many inconveniences and disadvantages to encounter both from climate and situation.

I am induced to think that Lieut't Colonel Morissett would be beneficially employed as Inspector of the "Penal Settlements," for which situation it would appear his information and experience render him peculiarly eligible.

I mentioned in my letter to Mr. Hay, above referred to, that there was too much reason to apprehend that the System, acted on at the Penal Settlements, was pernicious and required reform; and, conceiving Lt. Colonel Morisset to be qualified, as I gather from the communications made to me from your Lordship's Office, for such an undertaking, it is my intention, when he arrives, to send him to the different settlements for the purpose of placing them on a footing, more likely to answer the object of their Establishment than that in which they have been hitherto conducted.

His being continued in this situation would occasion an expence of but little more than £180 a year, the pay of the present Commandant of Norfolk Island. Lieut. Colonel Morisset will, of course, be required to inspect the other Settlements in succession, and to continue to do so in future, in order to his seeing that a proper system of discipline is kept up.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 26. per ship Queen Charlotte; acknowledged by the right hon. Wm. Huskisson, 26th December, 1827.)

My Lord, Government House, 16th February, 1827.

I have the honor to acknowledge the receipt of your Lordship's Despatch, No. 59/1826, transmitting Instructions from the Lords Commissioners of His Majesty's Treasury for keeping the accounts of the Revenue and Expenditure of this Government.

The necessary arrangements are now preparing for carrying these Instructions into effect. Feeling an earnest desire to obey implicitly the orders, I receive, I hope I shall not be considered as stepping beyond the line of my duty in observing, which I do with the utmost deference that an adherence to those Instructions in the circumstances of this Colony must be attended with great inconvenience and injury to the service, besides entailing additional expence on the Public. In proof of this, I need only point

1827.
15 Feb.

Proposed
appointment of
J. T. Morisset as
commandant at
Norfolk island.

16 Feb.

Despatch
acknowledged.

Instructions
re keeping of
public accounts.

1827.
16 Feb.

Instructions
re keeping of
public accounts.

out the time, which must necessarily elapse before an answer can be received from England; and that, if reference is to be made as directed on every occasion when the expence to be incurred exceeds £200, the effect must be extremely injurious. Repairs, for example, which, if made at the moment, would amount to little more than £200, might and probably would, if delayed twelve months, require double that sum to complete them. Still it appears that any measure, the effecting of which shall exceed that sum, if undertaken without previous authority from the Lords Commissioners of His Majesty's Treasury, will be considered at the personal responsibility of the Governor. The Governor, acting on the spot and on the most prudential motives, may consider particular measures or arrangements necessary, while a different opinion may be entertained at Home. I should, therefore, hesitate, unless urged by the most pressing and positive necessity, to incur the responsibility of a deviation from the line pointed out; and I must presume to think that your Lordship, on adverting to the remote situation of this Colony, will not consider the Instructions in certain respects applicable to it. A Colony, making rapid strides as this is, and situated 16,000 miles from the Mother Country, can hardly be bound without injuring its advancement by the common rules, which are applicable to Colonies under ordinary circumstances.

I beg it may be distinctly understood that I have not been induced to bring this circumstance under your Lordship's notice from any desire to possess a power, which His Majesty's Government may consider it inconvenient to delegate, but in order that your Lordship may be aware of the disadvantages of the measure, when applied to a Colony circumstanced as this is.

I have, &c.,
RA. DARLING.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 27, per ship Queen Charlotte; acknowledged by Viscount Goderich, 26th July. 1827.)

17 Feb.

Confidential
clerk for
colonial
treasurer.

My Lord, Government House, 17th February, 1827.

I have the honor to acknowledge the receipt of your Lordship's Dispatch, No. 60/1826, signifying that your Lordship had been pleased to approve, on the application of Sir Thomas Brisbane, of Mr. Balcombe the Colonial Treasurer being allowed a confidential Clerk at a salary of £150 a year. As your Lordship's Dispatch appears to have been written before the receipt of that, which I had the honor to address to you, No. 41/1826, I am

led to conclude that Your Lordship will consider the arrangement, which has already been made, as sufficient for every necessary purpose of the Treasurer's Establishment.

1827.
17 Feb.

I have, &c.,
RA. DARLING.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Guilford; acknowledged by Governor Darling, 22nd December, 1827.)

Dear Sir, Downing Street, 18th February, 1827.

18 Feb.

With reference to Mr. Wilnot Horton's Letter of the 31st of May last, I beg to inform you that three Grinding Mills of the same construction as those referred to in the accompanying communication from Mr. Hoare (which formed one of the Inclosures in the letter, above alluded to), are now preparing by the Inventor, and will be sent out to the Colony as early as possible.

Proposed
shipment
of mills.

Should these Mills not be found to answer the purpose, for which they are intended, they may probably be of use to the Colonial Government in some other way, or may be advantageously disposed of in the Colony, from the use, which may be made of them by private families not residing in the Vicinity of other Mills.

I remain, &c.,
R. W. HAY.

[Enclosure.]

MR. SAMUEL HOARE TO UNDER SECRETARY HAY.

Sir, Hampstead, 24th August, 1825.

The Mills, of which I spoke to Lord Bathurst as well adapted to Prison Labour, were Parke's Steel Grinding Mills worked by hand; they have been tried with success in Lancaster Castle and some other places of confinement, and are particularly serviceable where the number of persons is too small to make the erection of a tread wheel desirable. The mistake very probably has arisen from my having stated in the same conversation that the tread wheel might be introduced into solitary Cells.

Steel grinding
mills.

I remain, &c.,
SAMUEL HOARE.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 6. per ship Guilford; acknowledged by Governor Darling, 3rd August, 1827.)

Sir, Downing Street, 19th Feby., 1827.

19 Feb.

The perusal of the Act,* 5th Geo. 4, Cap. 84, on Transportation having occasioned doubts on the mind of the Lieut't Govr. of Van Diemen's Land as to how far the provisions of the

* Note 36.

1827.
19 Feb.

Effect of act
5 Geo. IV. c. 84,
on assignment
of convicts.

8th Section of that Act (which renders it legal for a Settler, having a Crown Prisoner assigned to him, to reassign such Prisoner at his Pleasure) may interfere with a local Regulation, promulgated by the late Governor Macquarie, whereby it is directed that no Settler should on any account re-assign or transfer a Crown Servant, or suffer him to be employed in any manner out of his own immediate Service, upon pain of being deprived of such Servant by the Sentence of a Magistrate, and excluded from further Indulgence; I do myself the honour to transmit herewith for your Information, in case of similar doubts occurring at New South Wales, a Copy of a letter addressed by the direction of Mr. Secretary Peel to my Under Secretary, in reply to a reference made to him on the subject; by which, you will perceive that it is competent to the Colonial Government to make any Regulations, which it may deem proper with reference to the Assignment of the Convicts, notwithstanding the Provisions of the Act in question, "provided the Assignee be apprized of the conditions, on which he accepts the Convict's Services."

I have, &c.,
BATHURST.

[Enclosure.]

UNDER SECRETARY HOBHOUSE TO UNDER SECRETARY HAY.

Sir,

Whitehall, 13 Feby., 1827.

Power of
governor to
make local
regulations.

I have to acknowledge the receipt of your letter of the 12th Inst. with its Enclosures, relative to the re-assignment of Convicts in New South Wales, and, having laid the same before Mr. Secretary Peel, I am directed to acquaint you for the information of Earl Bathurst that the 8th Section of the Act, 5th G. 4, C. 84, neither precludes, nor was intended to preclude, the local Government from making any Regulations, which may be necessary respecting the re-assignment of the Service of Convicts, but only renders clear the legality of such Re-assignments, which might have been otherwise doubted. The whole property in the Convict's Service is in the first Instance vested in the Governor; and the Governor, who is empowered to assign that Service, is fully competent to modify his Assignment in such manner, as Justice and good Policy may require. There is nothing in the Act to prevent the full Operation of Governor Macquarrie's Order of the 24th July, 1813, if care be taken that the Assignee be apprized of the condition under which he accepts the Convict's Service.

I am, &c.,
H. HOBHOUSE.

EARL BATHURST TO GOVERNOR DARLING.

1827.
19 Feb.(Despatch No. 7. per ship *Gullford*; acknowledged by Governor Darling, 2nd August, 1827.)

Sir, Downing Street, 19 Feby., 1827.

I do myself the honour of transmitting to you herewith the Copy of a Letter, addressed by the desire of Mr. Secretary Peel to my Under Secretary, respecting a Convict named "William Watson," whose sentence was commuted from Transportation for life to fourteen years; and I have to direct, in compliance with the wish therein expressed, that you take the necessary measures for rectifying any omission, which may have taken place in regard to this Prisoner in the Indents of the Ship, in which he was conveyed to New South Wales.

Sentence
passed on
W. Watson;

I have also to call your attention to that Paragraph of Mr. Hobhouse's letter, which refers to the case of Thomas Muldoon, and to communicate to you His Majesty's Commands that the Sentence, which was passed on that Prisoner, should be commuted to seven years, "if the Prisoner shall have conducted himself properly during the time that he has been in the Colony."

and
T. Muldoon.

I have, &c.,

BATHURST.

[Enclosure.]

UNDER SECRETARY HOBHOUSE TO UNDER SECRETARY HAY.

Sir, Whitehall, 13 Feby., 1827.

His Majesty having been pleased in the Month of May, 1821, to commute the Sentence of Wm. Watson, who was Convicted at the Lent Assizes for the County of Surrey in that year, from life to fourteen years Transportation, and which Prisoner proceeded to New South Wales in the Ship *Minerva* in the Month of July following, I am directed by Mr. Secretary Peel to desire that you will move Lord Bathurst to communicate the same to the Governor of that Colony, in case it should have been omitted to be notified in the Indents of that Ship.

Sentence
passed on
W. Watson;

I am at the same time to desire that a communication be made to General Darling of the Recommendation of the Lord Lieutenant of Ireland that the Sentence of Transportation for Life, passed upon Thos. Muldoon, who was tried at the Spring Assizes, 1820, for the King's County, be commuted to Seven years, if the Prisoner shall have conducted himself properly during the time he has been in the Colony.

and
T. Muldoon.

I am, &c.,

H. HOBHOUSE.

1827.
20 Feb.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 8, per ship Guilford; acknowledged by Governor Darling, 28th July, 1827.)

Sir, Downing Street, 20th Febr., 1827.

Appointment of
T. L. Mitchell
as deputy
surveyor-
general.

In consequence of the representations, contained in your dispatch of the 27th July last, respecting the inefficient state of the Surveyor General's Department, I do myself the honor of acquainting you that, in addition to the persons, whom I have appointed lately to be assistant Surveyors, I have nominated Major Mitchell* to be Deputy Surveyor General with a Salary of £500 per annum, commencing from the date of his embarkation. Major Mitchell will rank next to Mr. Oxley in the Department, to which he has been attached, and will therefore succeed to the Office of Surveyor General, whenever that Situation may become vacant. I have only further to acquaint you that Major Mitchell has been chosen for the above Situation on account of his qualifications and the high Character he bears as a most zealous and efficient Officer; and it has, therefore, been particularly gratifying to me to have been able to give the Colonial Government the benefit of his Services.

I have, &c.,

BATHURST.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 28, per ship Queen Charlotte.)

My Lord, Government House, 20th February, 1827.

Amendment
of government
notice.

I have the honor to inform your Lordship, in reference to your Despatch, No. 78/1826, that I have directed, when reprinting the Government Notice which accompanied my Dispatch of the 6th of May last year, that the alteration suggested by Your Lordship shall be made.

As the Outrages committed by the Natives are I believe invariably the result of ill treatment, I do not myself apprehend any ill consequences from the Notice; and the fact is that none have been experienced, though it has been issued several months.

I have, &c.,

RA. DARLING.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Guilford; acknowledged by Governor Darling, 2nd August, 1827.)

21 Feb.

Sir, Downing Street, 21st February, 1827.

Additional
land grant to
G. Innes.

I am directed by Earl Bathurst to transmit to you the inclosed letter, which has been addressed to Mr. W. Horton by Sir H. Innes, who is anxious that an additional Grant of Land

* Note 20.

should be made to Mr. George Innes, a Settler in New South Wales; and I am to request that you will comply with this application, if you shall consider Mr. George Innes to be entitled to the indulgence he solicits.

I have, &c.,

R. W. HAY.

1827.
21 Feb.

[Enclosure.]

SIR HUGH INNES TO UNDER SECRETARY HORTON.

Dear Sir, 270 Regent Street, 20th February, 1827.

A particular friend of mine, Mr. George Innes (son of Mr. Innes of Thramster, Caithness), got a Grant of Land in New South Wales about five years ago. And, as his Stock or Flocks have increased, he wishes to get a new Grant of as much Land as possible. Besides, the young man has got married, which is an additional stimulus to his exertions in improving what Land may be allotted for him.

Request for
land grant for
G. Innes.

I feel a very great Interest in Mr. George Innes' success; and if (as my namesake is now a married man) my Lord Bathurst shd. be disposed to comply with his wishes, it would be highly encouraging for the young man, and I confess at the same time very gratifying to me.

I would have waited upon you at the Colonial Office upon this business, But I know your time is precious. If you should wish for more particular information, I shall call upon you at any hour you may appoint.

I have, &c.,

HUGH INNES.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 29, per ship Queen Charlotte; acknowledged by Viscount Goderich, 27th July, 1827.)

My Lord, Government House, 21st February, 1827.

In acknowledging the receipt of your Lordship's Despatch, No. 82/1826, referring to that which I had the honor to address to You on the 26th of May last, in which I expressed my intention of reporting on the Military Defences of the Colony, I am now induced to submit, as it is of great importance that the subject should be placed under the view of His Majesty's Government in as complete a form as possible; that some competent Officers of the Royal Engineers may be sent out for this purpose.

Request for
engineer
officers.

The first object appears to be the immediate protection of the Town of Sydney, which, from its present defenceless state, would be exposed to the insult of even a single Ship, should War break out.

Defences of
Sydney.

1827.
21 Feb.
Defences of
Port Jackson.

The next is the general defence of the Colony, should it be considered expedient to construct Works with this view. The first is very important, the Town and Harbour being totally destitute of every Military defence; and any attempt from without, which could not be immediately checked, would probably encourage the Prisoners in Sydney, who are necessarily numerous, to take advantage of any confusion, which might be occasioned at the Moment.

Overseers and
stores required.

Should the Officers, who may be sent out, be authorised to construct Works, I would suggest their bringing with them more competent Workmen, more particularly to Act as Overseers, and a Supply of such Stores and Implements, as would be required in the performance of the Work to be undertaken.

I have, &c.,
RA. DARLING.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Guilford; acknowledged by Governor Darling.
2nd August, 1827.)

22 Feb.
Appointment
of trustees for
land grant to
church
missionary
society.

Sir, Downing Street, 22nd Feby., 1827.

Since I addressed to you my letter of the 31st Ultimo,* the Church Missionary Society have submitted to Earl Bathurst's Consideration a further explanation of the grounds, on which they were induced to make the request that the property, which has lately been granted to them in New South Wales, should be vested in Trustees here, instead of in that Colony; and, in transmitting to you a Copy of their second Application, I am directed to acquaint you that, provided ample powers be given by the Society to their Agents, who may be resident in the Colony, to manage the property in question in such manner as may appear to them best calculated to promote the objects, for which the Land has been granted, Lord Bathurst sees no objection to the arrangement proposed in Mr. Coates' letter; and his Lordship desires that you will take the necessary measures for carrying the same into effect.

I have, &c.,
R. W. HAY.

[Enclosure.]

THE REVEREND D. COATES TO UNDER SECRETARY HAY.

Sir, Church Missionary House, 12th February, 1827.

I beg to acknowledge your Letter of January the 31/27, in reply to mine of the 21st of that month, respecting the Grant of Land in New South Wales to the Church Missionary Society, and would take the liberty briefly to submit for Earl Bathurst's

* Note 37.

consideration the grounds, on which the Committee of the Church Missionary Society were induced to make that application.

The chief of these was the conviction, which the Committee feel of the expediency of a measure, which they are endeavouring as far as practicable to carry into effect, of having all the property of the Society vested in one set of Trustees, and those Trustees persons, resident in London and selected by the Committee, in order to be enabled with greater promptitude and certainty to effect whatever disposition of such property may be found necessary; and also to secure the keeping up a permanent body of responsible Trustees, and to avoid the great inconvenience, which may and often does result, when property is vested in Residents at distant Settlements, from Trustees dying or quitting the Settlement without having assigned their interest to other Trustees, and the difficulty and expence which may be occasioned in tracing out and getting a Conveyance from the Heir at Law of a Surviving Trustee.

With respect to the Grant in question, the Committee would farther observe that the Auxiliary Church Missionary Society for Australasia, though in union with the Church Missionary Society here, is by no means under its legal controul; it is possible, therefore, that a body of Trustees, selected from or by the advice of the Auxiliary Committee, and under the direction and controul of that Committee, might not always act in entire conformity with the views of the Parent Society; and, in case either of breach or neglect of duty, the Parent Society would have very inadequate means of correction; an inconvenience which would be wholly avoided, if the property were vested in Trustees here and managed by Agents appointed by the Committee of the Parent Society.

In making this suggestion, the Committee look to the possible interests of future times, which, as well as the present, they submit should be taken into consideration. In the present Committee of the Auxiliary Society and the Trustees, who have been selected from it, they have entire confidence both as to the unity of their views with their own and their diligent pursuit of them; nor do the Committee wish to appoint any other persons as their present Agents in this concern, than those who have already been selected to act as Trustees.

In addition to these considerations of advantage to themselves, the Committee would further submit to his Lordship that the convenience of His Majesty's Government in this matter may be promoted by the course, which they have suggested; inasmuch as, while the Governor of New South Wales would have as much

1827.
22 Feb.

Appointment
of trustees for
land grant to
church
missionary
society.

1827.
22 Feb.

Appointment
of trustees for
land grant to
church
missionary
society.

controul over the Agents appointed by the Committee here, as he would have over the Colonial Trustees and Auxiliary Committee, the Government at home would have a permanent and responsible body, always at hand, to whom they might resort for the correction of any sort of mismanagement which might be reported, or the execution of any measure which might be recommended, with far greater certainty of immediate and effectual compliance than would be depended on from so fluctuating a body, as the Officers or Settlers in the Colony must necessarily be, but from whom, in the event of the Governor thinking it necessary that His Majesty's Government should resume the land, a reconveyance might instantly be had without delay or difficulty of any kind.

The Committee respectfully propose these suggestions for Earl Bathurst's consideration; and, if they should be thought of sufficient weight, would solicit the fulfilment of his Lordship's kind offer to refer their application with these reasons for making it to the opinion of the Governor of New South Wales.

I have, &c.,

DANDESON COATES, Assistant Secretary.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 30, per ship *Queen Charlotte*; acknowledged by Viscount Goderich, 27th July, 1827.)

My Lord,

Government House, 22nd February, 1827.

Advances to
corporation
of clergy and
school estates.

I have been honoured with your Lordship's Despatch, No. 83/1826, in reply to mine of the 24th of May last on the subject of the money, which the Corporation for the Church and School Estates requested might be advanced for the purposes, pointed out in the Chairman's letter. As the objects, for which this money was required, had hitherto been provided for by the local Government, and as it was not to be expected that the Funds of the Corporation could, at the moment of its Establishment, become available, I considered myself bound to afford such necessary assistance, as the Corporation could not otherwise obtain, it being understood that they were to raise money on their own account as far as might be practicable, and that the Local Government was only to make up the deficiency by issuing from time to time the sums necessary for this purpose. In reporting this measure immediately to your Lordship, as I had the honor of doing, I was aware that no considerable sum could be called for, before I should receive your Lordship's Instructions; and I was further induced to comply, as the whole of the Executive

Council, from whom, under other circumstances, I should have sought for advice, united as Members of the Corporation in the Application.

1827.
22 Feb.

With respect to the Treasury Instructions, to which your Lordship has called my attention, I beg to assure you that I have not the least desire to deviate from them. I have, as my duty appeared to me to require, taken the liberty of pointing out, in my Despatch of the 16th Instant, that an adherence to their provisions must in many cases be a serious impediment to the service and the cause of considerable expence to the Public. But, as my attention to them is strictly enjoined by your Lordship's Despatch, to which I have now the honor to reply, I shall in all respects studiously conform to what is laid down. I have never for my own part considered that a discretionary power in the Expenditure or disposal of the public Money was at all desirable; and I am the better satisfied that the question is now put beyond the possibility of mistake. I have at the same time the satisfaction to add that no money has been called for by the Corporation for the purpose of building; and I have apprized the Trustees, as your Lordship will perceive by the enclosed Minute, that none will be advanced by the Local Government but what may be necessary for the payment of the Stipends of the Clergy.

Fulfilment of
instructions
from treasury.

Before closing my letter, I must request your Lordship's attention to the circumstance of the Corporation having a claim to one eighth of the Customs Revenue, set apart by Governor Macquarie for the maintenance of the Orphan Schools. This was granted at a time, when those Establishments were without funds, and is confirmed to the Trustees, together with the "Male Orphan School Estate," consisting of 13,000 acres, by the 32nd clause of the Charter, which runs as follows, vizt.

Proportion
of customs
revenue
allocated to
corporation.

"And it is Our Will and We do further declare that all and every the Lands and Tenements within Our said Colony, heretofore appropriated and set apart by the former Governors of our said Colony, or any of them, for the maintenance and Education of Male or Female Orphans, and all such parts of our Revenues arising within Our said Colony, as hath by any such Governor been appropriated and set apart for the Education of Youth therein, shall be and the same are hereby vested in and placed under the management, care and superintendence of the said Corporation, to be by them applied and disposed of in aid of the funds aforesaid, in and towards the Education of Youth in the said Colony in the principles of the Established Church."

Whether, under the circumstances of one seventh of the land of the Territory being now assigned for the support of the Church and School Establishments, and more particularly as the

1827.
22 Feb.

Proposed
abolition
of grant of
revenue.

Branch of the public Revenue, from which the eighth is directed to be paid, may reasonably be expected to increase considerably, it may be necessary to perpetuate the above Grant, which last year amounted to £6,000, I shall not presume to judge. A new Charter would, however, I conceive, be necessary for its discontinuance.

I have, &c.,

RA. DARLING.

[Enclosure.]

MINUTE BY GOVERNOR DARLING TO THE COLONIAL SECRETARY.

No. 18. Government House, 22nd February, 1827.

Advances to
corporation to
pay stipends
only.

LET the Chairman of the Committee of the Corporation for the Church and School Estates be informed that the Secretary of State has disapproved of the advance of money by the Local Government to enable the Trustees to proceed in erecting the Buildings, required for School Houses, the performance of Divine Worship, and the Residences of the Clergy; and that it will not be in my power in future to authorize the issue of any further sum, but what may be necessary for the payment of the stipends to the clergy or such portion, as their own funds may not be adequate to.

RA. DARLING.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Guilford; acknowledged by Governor Darling, 2nd August, 1827.)

23 Feb.

Appointment of
P. Elliott and
P. Ogilvie as
asst. surveyors.

Sir, Downing Street, 23rd Feby., 1827.

In addition to the Appointment, which I communicated to you by Earl Bathurst's direction in my letter of the 18th Ultimo, I have now the honor to acquaint you that his Lordship has nominated Mr. Philip Elliot and Mr. Peter Ogilvie to be Assistant Surveyors at New South Wales, with Salaries of Two hundred pounds per annum each, commencing from the date of their embarkation; and I herewith transmit to you the testimony, which has been borne to the abilities of these Gentlemen, by which you will perceive that they possess the necessary qualifications for the Offices, which they have undertaken.

I have, &c.,

R. W. HAY.

[Enclosure.]

TESTIMONIALS.

Bath Easton House, 13th February, 1827.

Testimonial
in favour of
P. Ogilvie.

MR. PETER OGILVIE has surveyed My Estate at Bath Easton, Somerset; and, upon comparison with one formerly made by an eminent Professional Surveyor, I find it to be fully equal to that, and indeed in some respects preferable. ALEXR. GRANT.

3 Old King Street, Queen Square, Bath.

I do hereby certify that I have examined Mr. Peter Ogilvie in the theory and practice of Surveying, and find him fully competent to undertake the direction of any Survey whatever.

THOS. J. DAVIES, Professor of Surveying and Math's.

1827.
23 Feb.

Testimonial
in favour of
P. Ogilvie;

Newcastle under Lynne, 6 February, 1827.

I HEREBY certify that Mr. Ph. Elliott has been employed under me in surveying and planning, and in taking levels of roads, and in all branches of Civil Engineering connected therewith, and that he is well qualified to undertake and execute correctly such works.

He is also well qualified to undertake and execute correctly Land Surveying, Planning and Measuring.

He is also an honest and industrious Young Man.

THOS. SLATER.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 31. per ship Queen Charlotte; acknowledged by Viscount Goderich, 6th August, 1827.)

My Lord, Government House, 23rd February, 1827:

I have the honor to refer, for the consideration of your Lordship, the accompanying copy of a letter from Lieut. Governor Arthur, transmitting the copy of one addressed to him by L't Travers of the Royal Veteran Establishment, claiming an allowance of four shillings a day under the Army Regulations in consequence of his having charge of a Party employed in making and repairing Roads.

Claim of
R. Travers to
additional
allowance.

On sending Captain D'Arcy's Company to Van Diemen's Land, I informed Lieut. Governor Arthur that, the Veteran Companies having been raised for the purpose of furnishing Superintendents and Overseers to the Convict Establishments, it was not my intention to grant any additional allowance to the Officers and men retained here, who should be so employed; and I have acted on this principle, not intending, however, to apply it to the Officers, who might be employed in the making of roads. It appears that Lieut. Governor Arthur has applied this principle to the Officers, so employed at Van Diemen's Land; but I have informed him, in answer to his letter, that I should refer the question for your Lordship's decision, and have recommended his granting Lieut. Travers an allowance of four shillings a day in the meantime, to be payable from the Colonial fund, the object being purely Colonial.

Lieut. Travers having quoted the regulations as excluding Officers belonging to the Royal Staff Corps from receiving the

1827.
23 Feb.

Superintend-
ence of road
parties of
convicts.

usual extra allowance, when employed in charge of road parties, I beg to state that I have allowed the Subaltern of that Corps, stationed here, five shillings a day and forage for a Horse, his duties not being confined to his own Corps or to one Party, but being extended to the Superintendence of several Parties of Convicts, dispersed over the different roads. As more Officers are required for this duty, which it is of much importance should be skilfully performed, I am anxious to employ some of the Officers of the Veteran Companies, as they can be more conveniently spared, than those of the Regiments in Garrisons, should they be found qualified; and I beg to submit to your Lordship that they may be allowed five shillings a day as Assistant Surveyors, while so employed, and Forage for a Horse.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

LIEUT.-GOVERNOR ARTHUR TO GOVERNOR DARLING.

Van Diemen's Land, Government House,

Sir,

7th Febr'y., 1827.

Claim of
R. Travers for
superintendence
of road parties.

I have the honor to enclose, for the consideration of Your Excellency, copy of a Letter received from Lieutenant Travers of the New South Wales Veteran Corps, claiming an increased rate of pay in consequence of his having the superintendence of a Road Party.

Your Excellency will perceive the question, upon which Lieutenant Travers grounds his claim, had been previously brought under my notice, and had been replied to according to the view, which I have taken of it; but, as Lieutenant Travers again urges the justice of his receiving the allowance usually granted to Officers of the Army, who have the charge of Road Parties, I am anxious to receive your Excellency's decision upon the manner, in which you considered the subject as regards the Officers of the New South Wales Corps under your immediate Government.

If Your Excellency should have determined that the position, taken by Lieutenant Travers, is admissible, I have the honor to request to be informed whether your opinion has been that the charge should be defrayed by the Colonial Revenue or from the Military Chest.

I have, &c.,

GEO. ARTHUR.

[Enclosure No. 2.]

LIEUTENANT TRAVERS TO LIEUT.-GOVERNOR ARTHUR.

Your Excellency, Lemon Springs, 24th January, 1827.

I take the liberty of writing to Your Excellency with reference to a letter, addressed by me to Major Turton, date as per margin (2nd October last), requesting him to enquire of

your Excellency, whether I was entitled to the allowance usually granted to Officers employed as Superintendents of Roads, vide general regulations and orders for the Army, page as per margin (233), where it is expressly declared that Four Shillings per diem shall be paid all Officers, so employed, with the exception of the Military Corps belonging to the Ordnance Department, and the Royal Staff Corps; it must appear to Your Excellency that a Veteran Company cannot be classed under the head of either.

1827.
23 Feb.

Claim of
R. Travers for
superintendence
of road parties.

The Application for said allowance can but come from me, as the only Officer of the Veteran Company so employed at present in this Island; the Officer, I succeeded at this Station, received it, as does likewise the Officer of the 40th Regt. at present so employed at the South Esk River; the reason alledged for my not being entitled to it is "that the Veterans were formed to act as Superintendents and Overseers; in consequence their Pay was made up to that of Cavalry, and therefore not entitled to any extra Allowance." There must be some mistake in this, as we understood in England that part of our Company were to act as Cavalry or Mounted Police (the greater part of the companys in New South Wales are composed of men, who formerly served in Cavalry Regiments and selected in consequence); this must appear to Your Excellency the sole motive in our receiving Cavalry pay, and not to debar us from any benefit, we may be entitled to by His Majesty's Regulations, the remainder to act in the capacity of Superintendents and Overseers, the Superintendents to receive four shillings a day.

It must appear improbable to Your Excellency had not such prospects been held out to us that other Officers, as well as myself, should have requested to be removed from Regiments of the line to a Veteran Company, where promotion ceases; and all we receive in lieu is one Shilling and six pence a day in addition to our former pay without the expectation of a future increase.

Your Excellency is aware of the privation and expense an Officer is liable to, removed as I am so far in the interior. In case Duty ever should require my attendance in Town, or to visit the Road any distance from my station, my pay would not be adequate to defray my expenses on the Road. I am likewise deprived of the advantages Officers derive from being quartered in Town.

I beg leave to submit this statement for your Excellency's consideration, fully relying on the justice of my claim, and Your Excellency's kind assistance in procuring me the abovementioned allowance as Superintendent of Road Parties.

I have, &c.,

ROBT. TRAVERS, Lt., N.S.W. Vt. Co.

1827.
24 Feb.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 32. per ship Queen Charlotte.)

My Lord, Government House, 24th February, 1827.

Restriction of
water frontage
to land grants.

1st. I have the honor to acknowledge the receipt of your Lordship's dispatch, dated the 26th of August last, No. 61, containing Instructions respecting the disposal of Land. It is very satisfactory to me to find I had anticipated your Lordship's Orders with respect to not making extensive Grants on the Banks of Navigable Rivers, it having some time since been laid down as a Rule that the River frontage of ordinary Grants should not exceed one Mile. I have further lately declined authorizing the Wesleyan Missionary Society to select land, which they had applied for along the Coast of Bateman's Bay, considering it would have been prejudicial to the interests of Settlers.

Abolition of
tickets of
occupation.

2nd. I beg to observe that the permission to graze, or "Tickets of Occupation" as they were termed, have been discontinued; and persons, desirous of occupying land for the purpose of depasturing their cattle, are required to pay a rent of Twenty shillings per 100 acres, and to quit the land in six months notice in the event of its being required. These arrangements, I am happy to think, are in accordance with the Instructions, which I have just now had the honor to receive. The other points, adverted to in your Lordship's Despatch relative to the conditions of payment for land purchased, will be immediately notified, when I receive your Lordship's commands on the references, which I had the honor to make in my Despatches, 43/1826 and 60/1826, with respect to the Granting and Sale of Land.

Conditions
of payment.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 33. per ship Queen Charlotte.)

26 Feb.

My Lord, Government House, 26th February, 1827.

Repayment of
loan by bank
of New South
Wales.

I have the honor to acquaint your Lordship, in reference to my despatch No. 32/1826, that the loan to the New South Wales Bank has been repaid with the interest thereon; and I have the satisfaction to think that the accommodation, so seasonably afforded to that Establishment on the part of the Government, has been the means of preventing much public distress and the ruin of the Bank, which otherwise would have been inevitable.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Queen Charlotte; acknowledged by under secretary Hay, 27th July, 1827.)

1827.
26 Feb.

My dear Sir, Government House, 26th February, 1827.

I beg to mention that, on the arrival of the late Commodore Sir James Brisbane, I was under the necessity of hiring a House for the accommodation of his family, it being impossible for me from the condition of the Government House to receive him and the ladies.

Rent of house
for family of
Sir J. Brisbane.

It appears that the Officers, commanding the Ships of War stationed heré, have heretofore been allowed Lodging Money, of which Sir James Brisbane had evidently been apprized; and, tho' I have not continued the allowance to the Captains, I felt, as it was not in my power to receive Lady Brisbane and her daughters into Government House, that I should subject myself to the imputation of want of attention to their accommodation, if I did not endeavour to provide for them in a suitable manner.

I have directed the Rent, amounting to £100, to be paid from the Treasury, which I hope Lord Bathurst will be pleased to authorize. But, should his Lordship decline doing so, I beg it may not be made known to Lady Brisbane. I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 34, per ship Queen Charlotte; acknowledged by Viscount Goderich, 27th July, 1827.)

My Lord, Government House, 27th February, 1827.

27 Feb.

The Clergymen, who have more recently come to the Colony, being desirous of being placed on a footing with their older Brethren, who had received Grants of land from my predecessors, I have been induced, as was indeed necessary to prevent jealousy and dissatisfaction, to authorize their receiving two square miles, or 1,280 acres, each, of which I hope your Lordship will be pleased to approve. This, even in addition to their Glebe, is not more than sufficient for their domestic purposes, where grazing is generally pursued in preference to agriculture. They are besides all married, and some of them have large families. It was on this ground principally that I was induced to comply with their wishes, doubting, as I still do, in some degree whether, so large a portion of the Territory being set apart for the support of the Church, it was incumbent on the Government to make further provision for the individuals belonging to it.

Land grants to
clergymen.

I have now further to request your Lordship's commands as to the clergy being permitted to receive land from Government to

1827.
27 Feb.

Applications
for additional
land by clergy.

Application
of archdeacon
for land.

any greater extent, than the quantity to which I have limited their Grants, vizt. 1,280 acres. The Reverend Mr. Marsden is already a considerable land owner. and has lately applied to be allowed to purchase 5,000 acres in addition. But I have signified to him that I could not authorize the purchase, until I should be informed of your Lordship's sentiments with respect to the Clergy generally becoming extensive farmers. Others have made similar applications, and have received the same answer. It is clear, however, that Government can only prevent their obtaining land from the Crown. It is impossible to interfere with their purchasing from Individuals.

I have only further to mention that Archdeacon Scott has applied for a Grant of 2,560 acres, the same as the other principal officers of Government, and for permission to purchase 2,560 acres.

I do myself the honor to enclose for your Lordship's information a return of the Lands at present held by the Clergy.

I have, &c.,
RA. DARLING.

[Enclosure.]

Return of lands
held by
clergymen.

RETURN of the Lands held by the several Clergymen of the Colony.

Names.	Quantity of Acres.		
	Grant.	Purchase.	Reserve.
Rev. S. Marsden	3,631	1,600	.....
Rev. W. Cowper	1,200	.....	.....
Rev. R. Cartwright.....	1,160	.....	.....
Rev. H. Fulton	1,100	.....	.....
Rev. R. Hill.....	.....	800	1,200
Rev. G. A. Middleton.....	.....	2,000	.....
Rev. Thos. Hissall	1,280	.....	.....
Rev. F. Wilkinson .....	.....	1,200	.....
Rev. J. E. Kean	1,280	.....	.....
Rev. M. D. Mears	1,280	.....	.....

28 Feb.

Issue of
commissariat
notes.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 35, per ship Queen Charlotte; acknowledged by right hon. Wm. Huskisson, 17th January, 1828.)

My Lord, Government House, 28th February, 1827.

Having found it necessary some time since, when Money was required for the public Service, to issue Notes of £5 and £10 each, giving them the same character as the British Coin. immediate convertibility into Bills on His Majesty's Treasury, I

beg to be informed whether such proceeding in future would be inconsistent with the 10th Article of the Instructions of the Lords Commissioners of His Majesty's Treasury, dated the 13th of June, 1826, which is as follows, Vizt.

1827.
25 Feb.

[Here followed the 10th article; see page 484, volume XII.]

I have only to add that the measure proved at the time a great public convenience, and could not, that I am aware of, be attended with any ill consequence. It had the effect of supplying the Market with money to the extent required by Government, and prevented the necessity of withdrawing from immediate circulation the coin, which had been issued. Had not Notes been substituted, the Coin would necessarily have been collected to the great inconvenience of the public at large by persons having occasion to purchase Bills. The circulation of the Notes prevented this; the public was left in possession of the Coin, that was required for internal purposes, and the issue of the Notes put the Government to no expence.

Advantage of
issue of notes.

I beg to observe that the 13th Article of the Instructions, above alluded to, would not according to my sense of the case be likely to answer the purpose intended. It runs as follows, vizt.

[Here followed the 13th article; see page 485, volume XII.]

The Commissariat being at present bound by the Public notification which accompanied the first issue of the British Coin to grant Treasury Bills at the above rate *at any time*, when the coin is presented, it is not to be expected that Individuals would, in consequence of the Advertisement merely to suit the convenience of the Government, exchange their Money for Bills, which they might not immediately require. If it be intended, which is not expressed in the Article of the Instructions alluded to, that a discount, that is, that Treasury Bills may be sold at a lower rate than that specified, it is evident that the issue of Notes is a saving to the Government to the amount of the Discount at which the Bills would be sold.

System of
issuing bills
on treasury.

It may be proper to state that the Banks and other Establishments, which find it necessary to keep a certain sum of money in hand, prefer the Notes to Coin, as being more convenient; and I, therefore, beg to submit to your Lordship that, under the circumstances which I have now the honor to represent, the circulation of Notes may be permitted to the extent of a few thousand pounds (not exceeding ten thousand), which, in addition to the convenience it will be to persons wishing to keep a certain sum of money by them, will insure the important advantage of leaving coin to the same amount in immediate circulation. Apprehensive, however, that the Lords of the

Preference of
banks for notes.

1827.
28 Feb.

Further issues
of notes
suspended.

Treasury may not approve of the measure, and being desirous of conforming strictly to their Lordships' instructions, which I have lately received, I have declined complying with the Applications, which have been made to me to continue the limited circulation of the Commissariat Notes, and have now nearly withdrawn the whole sum issued.

I do myself the honor to enclose a form of the Notes, above referred to.

I have, &c.,

RA. DARLING.

[Enclosure.]

SPECIMEN OF COMMISSARIAT NOTE.

Specimen of
commissariat
note.

TEN POUNDS STG.

No.	NEW SOUTH WALES.	No.
By command of his Excellency Lieut. General Ralph Darling, Governor in Chief, etc., etc., etc.		
On Demand I promise to pay.....		
or Bearer, TEN POUNDS Sterling.		
This Note will be received in exchange for Bills on His Majesty's Treasury on the same terms as British Silver Money.		
Registered....	No.	Commissariat Office,
	Sydney.....	Day of.....182—.
Approved,		
.....
Asst. Comy. Genl.		Depy. Comy. General.
Acct. Dept.		

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Guilford; acknowledged by Governor Darling, 2nd August, 1827.)

1 March.

Application
from
M. Phillips for
land grant.

Sir,

Downing Street, 1st March, 1827.

I am directed by Earl Bathurst to transmit to you here-with an application, which has been received from Mr. M. Philips for a Grant of Four Thousand Acres of Land at Western Port, New South Wales; and I am, at the same time, to forward to you the reply, which his Lordship desired to be sent to that Gentleman, by which you will perceive the extent of the encouragement, which has been held out to him in furtherance of the object, which he has in view in proceeding to the Colony.

I have, &c.,

R. W. HAY.

[Enclosure No. 1.]

MR. M. PHILLIPS TO EARL BATHURST.

My Lord,

108 London Wall, 4th Jany., 1827.

I respectfully beg to acquaint your Lordship that I intend to emigrate by the first Vessel to the Colony of New South Wales; it is my intention to fix my permanent residence there, my wife and six Children to follow.

I have for some time directed my views to the capabilities of this growing and prosperous Colony, and observe that agricultural Pursuits have been much neglected for that of the Growth of Wool.

Hitherto the Southern Parts of the Colony have not been located; and, for the furtherance of my object in the Cultivation of Grain and grazing in general, I have fixed upon that part of the Colony, called Western Port, as the most desirable; the Soil is congenial for the production of Grain, to which I shall mostly direct my attention; and, by having most respectable connections in the Brazils, I look forward with a Prospect of ultimate success in establishing there the consumption of New South Wales Wheat, as it has already a preference to the American flour.

It is my intention to proceed to Sidney with an Investment of a considerable Amount, which, as soon as realised, I intend to employ in this undertaking; and I assure your Lordship that I can rely on support from Friends in this Country, so as I may meet with success in this enterprize.

I humbly solicit that your Lordship under these circumstances will be pleased to grant me a location of four Thousand Acres of Land in that part of the Colony of New South Wales, called Western Port, with the further Privilege of purchasing four Thousand Acres more, subject to the existing Conditions and regulations of His Majesty's Government.

In the event of your Lordship's granting my request, as soon as I arrive in the Colony, I intend to take 30 convicts in my employ in order to proceed in this undertaking.

I beg to refer your Lordship as regards my Character, Respectability and Means of fulfilling these engagements, to the respectable House of Messrs. Samuel and Phillips, of 8 South St., Finsbury.

I am, &c.,

MICHAEL PHILLIPS.

[Enclosure No. 2.]

UNDER SECRETARY HAY TO MR. M. PHILLIPS.

Sir,

Downing Street, 28th Feby., 1827.

I am directed by Earl Bathurst to acknowledge the receipt of your letter of the 4th January, received this day; in reply to which, I have to acquaint you that the Governor of New South Wales will be directed to afford you any encouragement, which may be consistent with the Regulations in the prosecution of the objects, you have in view in proceeding to that Colony; but the quantity of land, to which you will be entitled, must depend upon the amount of Capital, which you may have at your disposal on your arrival there.

I am, &c.,

R. W. HAY.

1827.
1 March.

Request of
M. Phillips for
land grant at
Western port.

Reference of
application
to governor.

1827.
1 March.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 36, per ship Queen Charlotte; acknowledged by Viscount Goderich, 28th July, 1827.)

My Lord,

Government House, 1st March, 1827.

Travelling
allowances for
chairman of
quarter sessions.

Having communicated to Mr. Carter the purport of your Lordship's Despatch, No. 72/1826, respecting the Travelling Allowances granted to him as Chairman of the Quarter Sessions, I have now the honor to transmit for your Lordship's consideration the accompanying copy of a letter, which he has addressed in reply to the Colonial Secretary.

As Mr. Carter has entered into an explanation of the Expenses, to which he is subjected in the performance of this duty, it is unnecessary for me to trouble your Lordship further on this point; but I beg to submit to your Lordship that, if the Chairman is to receive only the Salary of £200 a year, the situation would not be worth holding, as no one could be expected to expose himself to the trouble and responsibility of the duties of Chairman of the Quarter Sessions, and to the fatigue and in fact danger of travelling by land and sea (Mr. Carter having on a late occasion been wrecked on the coast) without something in addition to his actual expences. If it were necessary to strengthen Mr. Carter's claim, I should take the liberty of pointing out that he has invariably discharged his duty with zeal, and evinced the utmost readiness in affording his assistance, whenever his services have been required. I have, &c.,

RA. DARLING.

[Enclosure.]

MR. W. CARTER TO COLONIAL SECRETARY MACLEAY.

Sir,

Sydney, 26th February, 1827.

Refusal of
allowances by
Earl Bathurst.

I had the honor to receive your letter of the 19th instant, enclosing a copy of part of a Letter from my Lord Bathurst in which he is pleased to say that he could not sanction as a permanent regulation the recommendation of His Excellency the Governor that I should receive one hundred pounds, as a remuneration for my travelling expenses in attending the Quarter Sessions.

I feel confident that, if Lord Bathurst had been aware of the necessary expenses incurred on those occasions, so very reasonable and moderate an allowance would have been immediately sanctioned.

Actual annual
expenses.

Now that the Sessions are held twice a year at Newcastle, my expences cannot be less than one hundred and fifty pounds per annum. I receive two hundred pounds as Chairman; the

consequence will be that, if no such allowance is granted, I shall receive only fifty pounds for presiding at sixteen Sessions, and for being absent from home about four months in the year.

1827.
1 March.

My predecessor's (Mr. Stephen's) expenses for attending the different Sessions amounted to upwards of Two hundred pounds per annum.

Expenses of
predecessor.

The Governor referred to a Board of Commissioners to fix the amount to be allowed for my travelling expences; and Mr. Stephens stated, either personally or gave in a written statement before them, that I could not attend the various Sessions under one hundred and fifty pounds. At this period, no Sessions were held at Newcastle; and I am confident that it will be impossible to attend those Sessions twice a year under an expence of fifty pounds.

Had these circumstances been known to Lord Bathurst, I cannot help believing that he would have sanctioned the Governor's recommendation. As these circumstances are well known to His Excellency the Governor, I have respectfully to request that he will have the kindness to cause this explanation to be forwarded to His Lordship, with such remarks as he may think proper.

Renewal of
application to
Earl Bathurst.

I feel so confident that, upon His Lordship's receiving the above explanation, my travelling expences will be allowed, I have further to request that I may continue to receive such allowance with the clear understanding that, if it is not sanctioned by Lord Bathurst, I am to refund any Sum I may receive from this time on that account.

I have, &c.,

WILLIAM CARTER.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch marked "Separate," per ship Queen Charlotte.)

My Lord, Government House, 1st March, 1827.

I have the honor to acknowledge the receipt of your Lordship's Despatches, numbered 66 and 73 of last year.

Despatches re
management
of convicts.

1st. Desiring to be informed of the precise Regulations, as they at present exist, for the safe custody and good conduct of the Convicts.

2nd. Directing that, as far as possible, the Convicts may be assigned to Settlers up the country, in order that they may be placed out of the reach of pleasures, which are open to those, who reside in the Town of Sydney.

3rdly. (No. 73) Recommending in all cases, where Mechanics are equal to undertake field work or any agricultural employment in the Country, they should be so distributed, although capable of being very profitably employed in Sydney.

1827.
1 March.

Management
and discipline
of convicts.

I beg to observe, in reference to the *first* head, that I am not aware that any precise regulation exists for the safe custody and good conduct of the Convicts. But I will point out, in as concise a manner as I am able agreeably to your Lordship's desire, the course which is pursued with the convicts from the time of their arrival.

The Convicts are *now* continued on board Ship, until the Lists of Assignment are made out. They are then landed and immediately marched off to their several destinations, so that they do not remain in Sydney for a day, or have any Communication with the Town.

If, while in service, they commit any offence, they are taken to a Magistrate and adjudged accordingly. But, if returned to Government for misconduct, they are in that case sent to work on the Roads, where they are kept for six months before they are again assigned. So that, according to the rule laid down, no convict should be kept in Sydney except those in the immediate employ of Government, and such as have been assigned to the inhabitants of the Town.

The Convicts employed by Government rise at daybreak. They breakfast immediately after, and are then marched off to their work with their respective gangs. They continue out till 12 o'clock, when they are marched back to dinner, and about 1 o'clock they return to their work, and remain out until sunset.

I have to observe that, with respect to the *Second* Head, the assigning convicts to Settlers up the Country, orders were given immediately on my arrival that they should be so disposed of in preference to being assigned to the Inhabitants of Sydney and the other Towns, to which I was induced from a consideration that the New Settlers in particular, who were numerous, had the best claim to assistance, and that the Convicts being so employed would benefit the Colony more than by being kept in Town; and that it would besides be more advantageous to the Individuals themselves. Still they have not invariably been so disposed of, and, however desirable with respect to the Individuals, the effect of the present Instructions must be injurious in the highest degree to the Town of Sydney.

In adverting to the *Third* Head, I can have but little to offer, as your Lordship appears fully aware of the inconvenience, which must result from not assigning Mechanics in Sydney. It is impossible to foresee how the different Trades, Tailors, Shoemakers, etc., are to be carried on; or how the Inhabitants are to be supplied with the necessary articles of clothing, the want of which must occasion very serious inconvenience. With respect to the other Branches, the Inhabitants are in a great measure,

Assignment
of convicts
to settlers
in country.

Assignment
of mechanics.

if not wholly, indebted to the assistance of the Government Mechanics. The well conducted have always been allowed to sleep out of Barracks; and, as a means of enabling them to provide Lodgings and maintain their families, most of them being married, they have been permitted to work on Fridays and Saturdays on their own account. Thus has the Town of Sydney been built, and various undertakings been carried on and completed. This system has prevailed so long that it could not without some risk and great injury to the Town and the Inhabitants be put a stop to.

1827.
1 March.
Management
of convict
mechanics.

Having adverted to the principal Heads of your Lordship's Despatches, I must beg your Lordship's permission, as the questions to which they relate are of great importance as well to the Colony at large as to the Convict population, to reply to the observations contained in the Despatch No. 73 in the order, in which they stand.

Your Lordship is pleased to state that the

[Here followed a quotation of the second half of the second paragraph in the despatch numbered 73, commencing at "facility"; see page 591, volume XII.]

The "facility," alluded to by your Lordship, is no doubt in every point of view extremely injurious, and it is also burthensome in the highest degree to the Government.

Return of
assigned
servants to
government.

The Assigned Convicts are on all occasions forwarded by the Government to the Persons, to whom they are assigned, however great the distance, which in some cases is not less than 150 or 200 Miles. If they are found not perfectly eligible, or appear in any respect objectionable, it is the practice to return them to the nearest Magistrate, by whom they are sent back to Sydney under Constables or other Persons employed by the Government. It was with a view of checking this abuse that I resorted to the Form (copy of which is enclosed) of application for Servants, which obliges the Applicant to state the number of Convicts in his service and the number returned to Government within a given time.

The above quotation from your Lordship's Despatch concludes with the observation "that that attention" (the moral improvement of the Convicts) "should be considered one of the necessary conditions, upon which convict labor can be obtained by the Settler." If the Chief Justice is correct in the view,* he has taken of the Act of Parliament, the Government has no controul whatever over an assigned convict (and to which effect he lately expressed an opinion in Council), the Assignee possessing under the 8th Section of the 5th Geo. 4, chap. 84, the same right, which

Opinion of
chief justice
re control of
assigned
servants.

* Note 38.

1827.
1 March.

Opinion of
chief justice
re control of
assigned
servants.

the Governor previously enjoyed of assigning such convicts as he may think fit. The "Australian" has since pursued the same argument with a view of shewing the Settlers and Inhabitants they are not dependent upon the Government for the Convicts, they require or receive.

The Chief Justice further intimated that the Government could not legally hire out convicts, as in the case of Mechanics in the time of Sir Thomas Brisbane's Administration, which practice has lately been discontinued, or lend them for a certain period, as I had lately done with a view of accommodating those Settlers, who required temporary assistance; but that, as the convicts were made over to the Governor for the purpose of Assignment, he was in fact bound to assign them, and could not afterwards grant them Tickets of Leave, or legally interfere in any respect with them.

Criticism and
effects of
opinion of
chief justice.

It may appear singular, this being the Law, that the Inhabitants have acquiesced in the assumption of the authority, which the Government has exercised over the Assigned Convicts. But it may perhaps be explained by reference to the advantages, which they enjoy under the existing system. According to this system, they can immediately rid themselves of an obnoxious servant by returning him to the Government, whereas, if the Act of Parliament is strictly adhered to, however infamous the servant, the Master would be obliged to retain him during the whole period of his Transportation.

When the Government has not the power of enforcing its regulations, it should not interfere, though one man may acquiesce as a matter of convenience, another may resist. It, therefore, appears to me that the Government ought to relinquish every claim to control the Assigned Convict, until legally invested with a right to do so. The embarrassment, which must arise from acting in an unauthorized manner, is obvious. If it be deemed expedient to continue the Law, as it at present stands, your Lordship will, I presume, wish that the Government should conform to it. In this case, some provision will be necessary to compel the Master to maintain his Assigned Servant on his farm or otherwise, and not to permit him to absent himself from his service or be at large. There are many Masters here, who would connive at the absence of a troublesome character in order to get rid of the expense of his maintenance, though they could have no doubt he was plundering and preying on the Public. Any Master, permitting it or not taking the necessary steps to recover a Servant, who had absconded, should be subjected to a heavy penalty, and be debarred from receiving convicts in future. But I am satisfied that even this would be

ineffectual. There are Masters, who, having a bad servant, would run all risks rather than retain him; and the convicts are so anxious to be on their own hands that they would behave ill in order to induce their Masters not to notice their absence. As no measure with a view to the above object is at all likely to be effectual, the only remedy, that I am aware of, is to give the Government the control over the whole mass of the convicts, whether assigned to Settlers or not. The Government has hitherto exercised this control, and the Inhabitants have acquiesced in it. But, as the Question has lately been discussed in the public Papers, it has assumed a different character, and must now be disposed of and set at rest.

1827.
1 March.

Criticism and
effects of
opinion of
chief justice.

While on the subject of the Act, which regulates the transportation of Convicts to this Colony (5 Geo. 4, ch. 84), I must request your Lordship's attention to other points, which require consideration. It would appear, by the tenor of some of the communications lately made to me (Mr. Horton's Private Letter* for example respecting educated Convicts), as if it were supposed the Governor could dispose of the Prisoners of the Crown, as he might think fit. The Chief Justice entertains a very different opinion, and does not consider, as I have already stated, that the Governor has any power over a convict beyond the mere assigning him, and that consequently that power ceases the moment he is assigned; that the Governor cannot of his own authority remove a Convict to a Penal Settlement, or order his being worked in Irons.

Opinions re
power of
governor to
assign convicts.

Having brought these matters under your Lordship's notice, which I have felt it my duty to do, I shall recur to your Lordship's despatch, in which I observe your Lordship dwells with much earnestness and anxiety on the effect, which it is so desirable should be produced at Home by a knowledge of the treatment, to which Convicts are subjected after their arrival here, so as to operate in checking crime, and further on the means to be pursued for the reformation of the convict. Your Lordship appears aware that the object of the institution of this Colony has in a great measure been lost sight of, which is perhaps a natural consequence resulting from its present advanced state; and it may now be a question whether an attempt should be made to re-establish its original character.

Effect of
disciplinary
measures on
restraint
of crime.

Previously to my coming out, I had formed a Plan, with a view to the prevention of Crime at Home, of working all Convicts in Irons on the public works for a certain period after their arrival; at the expiration of which, I had purposed to assign them to Settlers, and, in the event of misconduct, of replacing them in the Road Gangs. Their employment on the Roads in

Plan for
discipline
of convicts.

* Note 39.

1827.
1 March.

Plan for
discipline
of convict.

Advocacy
of cause of
convicts in
the press.

trons, in the first instance, would have rendered their assignment to the Settlers a desirable release from a painful and degraded situation; and, in proportion to their dread of being so employed, they would have behaved to their Masters so as to avoid at least being returned to Government. But, the demand for public labour was so urgent, at the time of my arrival, I was obliged to relinquish the intention of disposing of them in the manner above mentioned, and to assign them at once to the Settlers and Inhabitants.

The question respecting the conduct of the Convicts has now become more difficult from the open manner, in which the newspapers have of late espoused their cause. The "Monitor" is written expressly for the convict population, and its sale amongst them is very extensive. The object may have been to increase the profits of the Paper; but the effect is dangerous in the extreme, by persuading those People they are unjustly dealt with and exciting a spirit of discontent amongst them. The "Australian," as I have stated on a former occasion, envious of the lead which the Monitor had taken, abandoned its courteous proceeding towards the Government, and, by writing in favor of the Convicts, is now reaping the benefit of its apostacy, having obtained a more extensive sale. I have not thought it necessary to trouble Your Lordship with any remarks on the various matters, which are now brought forward in this Paper. To reply to them would be impossible, as the facts are grossly distorted, or the statements without foundation.

I have, &c.,
RA. DARLING.

[Enclosure.]

FORM OF APPLICATION FOR CONVICTS.

To the Principal Superintendent of Convicts.

Sir,of.....182 ..

In conformity with the Regulations, I request.....Convict
Servant be assigned to me of the following description, viz.

I reside at.....in the County of..... I am a
.....and hold.....Acres of Land, of which.....Acres
are cleared and.....Acres are in tillage.

I possess.....Heads of Cattle and.....Sheep.

I now employ.....Free and.....convict servants, viz.

.....of the above have been in my service upwards of three years,
and.....upwards of one year.

.....assigned Servants have been returned by me to Govern-
ment within the last two years, and.....others have absconded
from my service during that period.

I am, &c.,
.....

Form of
application
for assigned
servants.

We do hereby certify that.....has been known to usthat we believe the foregoing Statement to be correct; that.....has the means of maintaining and furnishing Employment for the number of Servants applied for; and that he is of sober, honest and industrious Habits.

1827.
1 March.

Form of
application
for assigned
servants.

M. Howe, Govt. Printer.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 37, per ship Queen Charlotte; acknowledged by under secretary Hay, 9th August, 1827.)

My Lord, Government House, 2nd March, 1827

2 March.

I have the honor to represent to your Lordship that, if Stores could be sent out for the use of His Majesty's Ships, which occasionally come to this Station, it would be a great convenience to the Service.

Request for
supply of
naval stores.

The *Warspite*, *Volage*, *Fly*, *Success* and *Rainbow* have arrived here within the last four months, all of them requiring Equipment to a certain extent, and the demands of some having been considerable, while our means have not exceeded the supplies, necessary for the few small Vessels, employed by the Government, which were consequently soon exhausted without the possibility of replenishing them in the Colony except at a great additional expense.

The circumstance of these Vessels calling and remaining here for a time is extremely beneficial to the Colony in every point of view; and, as it appears to be a Station where a couple of Ships of War might be constantly employed with much advantage to the Public Service, I would beg to suggest that Stores might be sent out on account of the Navy, in charge of some competent person to issue them when required.

I presume it is not necessary for me to point out the particular description of Stores, as the Naval Departments at Home will be the best judges of what may be necessary.

I have, &c.,

RA. DARLING.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 9, per ship Gullford; acknowledged by Governor Darling, 2nd August, 1827.)

Sir, Downing Street, 4th March, 1827.

4 March.

I have the Honor herewith to forward for your information the Copy of a letter from Mr. Hill, Secretary to the Treasury, addressed to one of my Under Secretaries, respecting the future payment of Bills drawn from the Colony on account

Payment of
salaries of
civil officers.

1827.
4 March.

of Salaries of Civil Officers of the Colonial Government of New South Wales, hitherto paid out of funds voted by Parliament; and I have to desire that you will give directions for the payment of a Sum into the Military Chest out of the Colonial Revenues, equal in amount to that which may be so drawn.

I have, &c.,
BATHURST.

[Enclosure.]

MR. J. C. HERRIES TO UNDER SECRETARY HAY.

Sir,

Treasury Chambers, 3d March, 1827.

Bills drawn
in payment of
salaries of
civil officers.

Having laid before The Lords Commissioners of His Majesty's Treasury your Letters of the 10th and 20th Ultimo on Letters from Mr. Lake, requesting Instructions respecting several Bills, which have been drawn upon him by Deputy Commissary General Moodie, on account of the Salaries of Certain Civil Officers of the Colonial Government of Van Diemen's Land, and reporting the outstanding Bills for the Salaries of the Officers in the Civil Establishment of New South Wales, which remain unpaid, I am commanded by their Lordships to acquaint you that they have directed a Copy of your Letter to their Lordships of the 10th Ultimo to be transmitted to Mr. Lake, with authority to him to pay the Bills in question. And My Lords have also desired that he will make up and transmit to them a Statement of all Bills, drawn upon the Agent for New South Wales for Salaries of Officers upon the Civil Establishment, of which he has been advised, but which have not yet been presented for acceptance, and also a Statement of his own Accounts shewing the Balance of Public Money, which will remain in his hands after the payment of all Bills, which he may have accepted it being their Lordships' intention to direct that all those outstanding Bills should be paid by Mr. Barnard, the Agent for the Colony, out of any Colonial Funds, which may be in his hands; to whom also, it is their Lordships' intention to direct that the balance in his (Mr. Lake's) hands should be paid, it not being proposed to submit to Parliament any further Estimates for the Expenses of the Civil Establishments of those Colonies. And I am to request you will move Earl Bathurst to give corresponding directions to Mr. Barnard, the Colonial Agent; and My Lords will, from time to time upon his Lordship's recommendation, issue such Sums to Mr. Barnard, as may be necessary for carrying on this Service, upon the distinct understanding that similar Sums will be paid into the Military Chest in the Colony out of the Colonial Revenues.

System to be
adopted in
future
payments.

I am, &c.,

J. C. HERRIES.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Magnet.)

1827.
6 March.

My dear Sir, New South Wales, 6th March, 1827.

I am exceedingly disappointed and mortified that I have not been enabled, as I promised in my letter of the 16th of December last, to forward you before this a List of the Persons, whose salaries and allowances should be chargeable to His Majesty's Treasury as being immediately attached to the Convict Establishments. The Board, which I then mentioned as being assembled to revise the Salaries of the old appointments, have, from some unaccountable delay, not yet closed its report; and it is, therefore, out of my power to send a satisfactory statement. In the absence of this, it only remains for me to furnish a statement of the actual salaries, which, however, will not be subject to any considerable change. It will be necessary, I conceive, to increase the salary and allowances of the Principal Superintendent of Convicts, which at present are about £350 a year to £600. The Office is now placed on an efficient footing, and the duties are of the most laborious and disagreeable nature. The Superintendents of some of the Establishments have hitherto been paid, or they are rather engaged with an understanding that they were to receive a percentage of the Stock raised, or proceeds of the Establishments under their superintendence. But it has been impossible to come to any satisfactory arrangement; and they were informed some time since that a fixed salary would be granted in lieu. The Board has not yet enabled me to determine the amount; but I have inserted in red Ink the sums, which I shall probably propose as the salaries of the respective Individuals.

You will understand that the expence of the *Agricultural* and *Stock* Establishments are considered chargeable to the Home Government, as the supplies raised by those Establishments are, as far as they go, applied to the maintenance of convicts.

The rough Estimate, which accompanied my letter of the 16th of December, was not confined, as you were of course aware, to salaries and allowances, but was intended to include a variety of Incidental charges, *Carriage, Freight* (which is now from the number and distance of our Settlements a very serious expence), etc.; and the several amounts inserted, I understand from the Auditor, do not differ very materially from those of the year 1825.

I observed, in my former letter, that I should not be disposed to charge the Home Government, if it could be avoided, with any portion of the expence of the Judicial, the Police or Jail Establishments. But the convict population claims so large a share of the attention of these Establishments, that it appears to me

1827.
6 March.

Salaries of
officers and
expenses of
convict
establishment.

on consideration quite impossible to exclude the Home Government from a participation in the expence; and the proportion, proposed by the Board in its Report of the 23rd November last, would not perhaps be unreasonable.

If it were thought necessary to bring forward the whole expences of the Convicts, including their Food and Clothing, it would simplify the statement to exclude the charges for the Agricultural and Stock Establishments, and to make an estimate of the actual expence of the maintenance of each man. The Colonial Government would then pay the expenses of these Establishments, and receive from the Commissariat the current value of the produce, raised and supplied by them for the use of the Convicts.

I remain, &c.,

RA. DARLING.

P.S.—Since closing my letter, I have received a supplemental Report from the Board, dated the 26th Ult., respecting the incidental expences, which I have adverted to in this letter as having been included in the rough Estimate, which accompanied my last; and I enclose a copy of the said Report for your information.

[Enclosure No. 1.]

[This was a detailed statement of the salaries, paid to all the officials of the convict establishments in all parts of the colony, including Melville and Norfolk islands, King George's sound, and Moreton bay. A copy will be found in a volume in series II.]

[Enclosure No. 2.]

MESSRS. MACLEAY AND LITHGOW TO GOVERNOR DARLING.*

Sir,

Sydney, 26th February, 1827.

Report on
expenses of
convict
establishment.

On further consideration of Your Excellency's Minute, dated 13th November, 1826, directing us to report what particular salaries, charges or portion of the public expenditure of the Colony should, according to the principle laid down in a letter, marked "Private" from the Under Secretary of State, dated 9th March of the same year, and with reference to our former Report on the same subject, We find we have omitted to notice some contingent charges, which have been occasionally paid from the Colonial Treasury, but which ought, in our opinion in accordance with the said principle, to be borne by the Home Government and defrayed by the Commissariat Department.

The Wool, supplied to the Weaving Establishment at Parramatta for the purpose of furnishing employment to the female convicts confined in the Factory, and of being ultimately converted into cloth for the clothing of Convicts, ought in our

* Note 40.

opinion, as forming part of the expenses of the discipline and maintenance of convicts, to be provided and issued by the Commissariat, into whose charge the cloth, produced by the Wool, is delivered; and accordingly not only the cost of the Wool, but also all the necessary expenses connected with the manufacture, ought to be defrayed by that Department, and not disbursed as hitherto from the Colonial Revenue.

The contingent expenses of the Establishment of Shoemakers and Taylors, employed at Hyde Park Barracks, ought we think for similar reasons also to be paid by the Commissariat.

The Commissariat have for a considerable time provided for the greater portion of the expenses of the Transport of Provisions, clothing, and Medical supplies for the Convicts, employed by Government throughout the Colony. Sums, however, on this account, have occasionally been paid from the Colonial Treasury, more particularly for the conveyance of Coals from Newcastle for the Convict and Military Establishments at Sydney. We recommend that in future the conveyance of such supplies should in every case, when the means of transport at the disposition of Government is inadequate to effect it, be uniformly provided and paid by the Commissariat.

The passage of Officers and Convicts, to and from the Penal Settlements and other out stations, when they cannot be furnished on board of one of the Government Vessels, should we think also be defrayed by that Department.

The conveyance of Tools, Building Material, and Stores, exclusively for Colonial purposes, to the Settlements of Western Port and Melville Island, are the only articles, the expenses of which it might be considered objectionable that the Commissariat should defray; but these are so inconsiderable that we do not think it would be found worth while to make them an exception; and, even if it were thought proper to do so, we would recommend that they should, for the sake of uniformity of account, be paid by the Commissariat in the first instance, and be refunded if necessary to that Department every six months.

A portion of the expense of supplying fuel to the Convict Establishments at Parramatta, Liverpool and Windsor, has hitherto been defrayed by the Colonial Treasurer. We recommend that, in future, Fuel and Light for all such Establishments, as well as for the Hospitals, Gaols and *Phoenix* Hulk, should in every instance be provided, paid for, and accounted for by the Commissariat Department.

A regulated scale of these allowances for the several Establishments should, we recommend, be furnished to the Deputy Commissary General for his guidance; and he should be held

1827.
6 March.

Report on
expenses of
convict
establishment.

1827.
6 March.

Report on
expenses of
convict
establishment.

responsible to make his issues in conformity therewith, and to account for such issues in his provision accounts, on principles similar to those, which have lately been ordered to be observed in supplying Fuel and Light to the Military.

Some portion of other contingent expenses of Convict Establishments have also been occasionally disbursed from the Colonial Fund. We are of opinion that, as all such consist of expenses originating in the appropriation of this Colony as a place of punishment, it will be proper that they should be paid from the same Funds, as the other expenses of maintaining Convicts.

In recommending, however, that the Salaries of the Establishments mentioned in our former report, as well as all the contingent expenses of such Establishments, and those above referred to, should be paid by the Commissariat from the Funds to be provided by the Home Government, we think it right to state it as our opinion that it would only be reasonable that the proceeds of the produce of such Establishments, when sold, such as of Timber, Tobacco, Sugar and Live Stock, should, when realized, be paid over to the Commissariat Department in aid of the sums required to meet the expenses of maintaining them.

We have, &c.,

ALEX. MCLEAY. WM. LITHGOW.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch marked "Private," per ship Queen Charlotte.)

7 March.

Trial of pirates
from brig
Wellington.

My dear Sir,

Sydney, 7th March, 1827.

I will not close my Despatches without acquainting You that every thing here is perfectly quiet. The trials of the Pirates are concluded, Twenty three have been Convicted, a few have been acquitted, and a number were not brought forward, not having participated in the transactions or Seizure of the Vessel.

The Executive Council was engaged two days in deliberating as to the disposal of those Condemned to suffer; and it has been determined that Six shall be executed on the 12th inst. Walton, who assumed the command, has been spared in consequence of his extremely moderate Conduct, and the exertions he used to preserve order after the event; and it was on the same ground that it was Considered that the Execution of Six would be sufficient for Example, as no unnecessary violence appears to have been used either in effecting their object or subsequently. I should, notwithstanding, have considered the Execution of Walton necessary; but, as the whole Council united in recom'g him to mercy, I was unwilling to act contrary to their wishes. It is not in my power to report officially by this opportunity; but

I shall do so in a few days by the Cumberland, which is now under despatch. I have replied to most of the Despatches, which called for Special Answer. Mr. Horton's private letter,* respecting the "Educated Convicts," requires a little consideration; but I shall endeavour to reply by the next opportunity. I can only add that the *Queen Charlotte* Brig, which takes this Letter, is the first Colonial built Vessel,† which has left for England.

1827.
7 March.

Sailing of
brig *Queen
Charlotte*.

I remain, &c.,
RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Magnet.)

Sir,

Government House, 9th March, 1827.

9 March.

I beg to state to you, in reference to my letter of the 27th January last, respecting the addition I proposed making to the allowanees to Mr. Raymond, that, previous to my giving the order to the above effect, I received your letter of the 5th of October last; and I have informed Mr. Raymond in consequence that it is not in my power to increase the allowanees originally granted to him.

Refusal of
increased
salary for
J. Raymond.

I must, at the same time, observe, if Mr. Raymond is considered as having a claim on Government for an allowance adequate to the maintenance of his family, that what he receives at present is by no means sufficient.

I have, &c.,
RA. DARLING.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Layton.)

Sir,

Downing Street, 10 March, 1827.

10 March.

With reference to Earl Bathurst's dispatch of the 4th December last, I am directed to acquaint you that his Lordship has appointed Mr. Thompson to be an Assistant Surveyor at New South Wales with a Salary at the rate of Two Hundred Pounds per annum, commencing from the date of his embarkation.

Appointment of
J. Thompson
as assistant
surveyor.

Mr. Thompson has been for some months employed under the Librarian of this Department in copying and constructing various Maps and Plans; and the accompanying testimony and enclosure from that Gentleman prove that Mr. Thompson is capable of being employed as a Draftsman, in addition to his other duties of Assistant Surveyor.

I am, &c.,
R. W. HAY.

* Note 39. † Note 41.

1827.
10 March.

[Enclosure No. 1.]

MR. G. MAYER TO UNDER SECRETARY HAY.

Sir, Colonial Department, Downing Street, 8 March, 1827.

Testimony
in favour of
J. Thompson.

Mr. Thompson having applied for a Situation in the Surveyor General's Department of New South Wales, I beg leave to acquaint you that, during the Six Months he was employed in this Office, he discharged his duty with zeal, ability, and industry, as the various Maps and Plans he constructed and copied fully prove.

In further testimony of Mr. Thompson's Qualifications, I beg leave to enclose a letter addressed to me by Mr. Pawley of the Quarter Master General's Office, who has been acquainted with him from his youth, and fully able to speak as to his acquirements.

I have, &c.,

GEO. MAYER.

[Enclosure No. 2.]

MR. G. PAWLEY TO MR. G. MAYER.

Quarter Master General's Office, Horse Guards.

Dear Sir,

7th March, 1827.

Understanding that Mr. Thompson, whom I formerly recommended to your Department, has been appointed to a Situation in New South Wales as Draftsman and Assistant Surveyor, I am anxious to state to you his Qualifications.

He is an excellent plan and Geographical Draftsman, has been employed in Field Sketching and Surveying, is a tolerable Landscape Draftsman, and writes a fine hand. I have known him from a Boy, and will answer for his good conduct; and I have no doubt he will prove a valuable Servant to the Colony.

I remain, &c.,

G. PAWLEY.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 38, per ship Magnet.)

My Lord,

Government House, 10th March, 1827.

Salary of
J. Stephen as
acting chief
justice.

I have the honor to state to your Lordship, in reference to my Despatch, No. 6/1827, respecting the additional Salary, which it was my intention to issue to Judge Stephen for the period, he had acted as Assistant Judge under Sir Thomas Brisbane's appointment, that, having received the General Instructions of the Lords Commissioners of His Majesty's Treasury, which forbid my increasing the Salary of any officer, at the moment I had given directions to prepare the Warrant, I was necessitated to decline fulfilling the intention I had expressed to your Lordship; and I have informed Mr. Stephen that, under

the circumstance, I shall have no objection to forward his application, should he be disposed to make one to your Lordship on the subject.

I have, &c.,

RA. DARLING.

1827.
10 March.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 39, per ship Magnet; acknowledged by right hon. W. Huskisson, 15th October, 1827.)

My Lord, Government House, 11th March, 1827. 11 March.

I have the honor to transmit, for your Lordship's consideration, Copy of the Report of the Land Board on a complaint of Mr. Peter McIntyre against Mr. Henry Dangar, an Assistant in the Surveyor General's department. Complaint of
P. McIntyre
against
H. Dangar.

I took some pains myself, in the first instance, in enquiring into the matter; but, as it required more time than I could conveniently devote to it, I requested the Colonial Secretary to pursue the investigation, which I was at length under the necessity of referring to the Land Board, whose province it more immediately was to report in such matters. My impression from the first was that Mr. Dangar had made his public situation subservient to his private views and interests; and I think your Lordship will be satisfied by the enclosed Report that it was impossible to continue him in the service. Suspension of
H. Dangar.

It has been intimated to me that Mr. Dangar has done no more than others in his situation; and your Lordship will see that the Land Board had proposed a less decisive course of proceeding than I have felt it my duty to adopt. But it appeared to me, if Mr. Dangar's conduct was to be noticed "at all," that nothing short of the removal would be a sufficient punishment for his misconduct or an example to others.

I should observe that Mr. Dangar sent in his resignation some time after the commencement of the investigation, conceiving, as I presume, if he were out of the service, that he would be permitted to retain the land, which he had so improperly appropriated to himself and his brother. I believe he was informed I would not allow him to retire, pending the Investigation; and he requested to be allowed to withdraw his letter. Resignation
tendered by
H. Dangar.

I do myself the honor to enclose the copy of a Minute, which I issued as the result of the Investigation; and I beg to submit to your Lordship that Mr. Henry Dangar may *not* be permitted to retain the 1,300 acres, alluded to in the Minute, which I have directed shall be retained subject to your Lordship's decision, or be allowed to possess any land in the District of Hunter's River. Withdrawal of
land from
H. Dangar.

The Authority for his receiving land was granted by Sir Thomas Brisbane. He was allowed 700 acres without purchase.

1827.
11 March.

and 1,300 acres reserved for him with permission to purchase 2,000 acres; and his brother Mr. William Dangar was permitted to receive 2,800 acres by Grant and purchase. I have, &c.,

RA. DARLING.

P.S.—I have not forwarded the Papers, which were laid before the Board and are referred to in the Report, being voluminous and as the Report itself appears to contain every necessary information.

R.D.

[Enclosure No. 1.]

REPORT BY LAND BOARD TO COLONIAL SECRETARY MACLEAY.

Sir, Land Board Office, Sydney, 28th February, 1827.

We have now the honor to acknowledge the receipt of your Letter (marked No. 3, and bearing date the 8th Ultimo) with which you transmitted to the Board by the Command of His Excellency the Governor a series of original letters from Mr. Peter McIntyre, the Surveyor General, Mr. Henry Dangar an Assistant in the Surveyor General's Department, and from his brother Mr. William Dangar, "on the subject of a complaint, made by Mr. McIntyre of the conduct of Mr. Henry Dangar in unduly and unwarrantably appropriating to himself and his brother Land on Hunter River, lying between Dart Brook and Kingdom Ponds, so as to have prevented him, Mr. McIntyre, from having that priority of selection, to which he considered that he was entitled as Agent for Mr. Potter Macqueen, as well as for himself and his brother."

Informing the Board also that, "by His Excellency's direction, you had called upon the parties before named to attend at your Office with the view of ascertaining by a *viva voce* examination the real circumstances of the case, as to the actual right of priority of the parties on their several claims; and that, after a full investigation, it appeared to you beyond a doubt that Mr. Henry Dangar had the first claim to select 1,300 acres; that he accordingly selected that quantity in the place, marked A in the accompanying Map No. 2; and that you had informed Mr. McIntyre he was then at liberty to select all the Lands, ordered for himself, for his brother, and for Mr. Potter Macqueen. That Mr. McIntyre had consequently selected the Lands, marked with their respective names in the said Map; and that you had requested of Mr. Oxley to furnish you with a Map, showing those several selections before any further proceedings should take place. You further state that the Map No. 2 was accordingly prepared; but, instead of being confined to the Selections, which you considered as settled, you found that it contained several other allotments of land to Mr. Henry Dangar and his brother William; and that the 1,300 acres, which Mr. Henry

Report by
land board on
appropriation
of land by
H. Dangar at
Hunter river.

Dangar was allowed first to select, were transferred to his brother's name. That you also found the Western Boundary line of Macqueen's land was drawn differently, from what you had directed. That you had, therefore, objected to the Map in question, but that, before you had an opportunity of submitting it to the Governor in order to receive His Excellency's commands on the subject, Mr. McIntyre had addressed to His Excellency a letter, dated 23rd October last, protesting either directly or by implication, not only against the new Map, but also against all the arrangement, which you had made by His Excellency's direction."

1827.
11 March.

Report by
land board on
appropriation
of land by
H. Dangar at
Hunter river.

"That under these circumstances His Excellency had been pleased to direct that the whole case be referred to the Board; and you accordingly directed that we should investigate the matter, calling the several parties before us, if necessary, in order that we should report to you for His Excellency's information what may appear to the Board as proper to be done in the case."

In obedience, therefore, to the Instructions contained in your Letter, we have the honor to report, for the information of His Excellency the Governor, that, after a careful perusal of the various documents laid before the Board, we considered it necessary that the Surveyor General's letter, addressed to you on the 8th of September (marked C), and also the letter of Mr. William Dangar, bearing date the 28th of October last (marked H), should be transmitted to Mr. McIntyre, and that he should be called upon to lay before the Board such remarks, as he might have to offer on some of the points at issue, which appeared to us to require further elucidation. His two letters, herewith enclosed, the first bearing date the 29th Ultimo (marked L), and the 2nd dated the 16th Instant (marked M), were accordingly received by the Board, and contain Mr. McIntyre's observation on the two letters in question.

In order, however, to give the other parties concerned an equal opportunity of laying before the Board such further remarks as they might have to offer on the subject of those Letters, we considered it equitable that copies of them should be sent to the Surveyor General, and also to Mr. William Dangar, which was accordingly done; and the Surveyor General's letter, bearing date the 17th Instant (marked N) together with a letter from Mr. Henry Dangar on the part of his brother, William, dated the 24th Instant (marked C), were received in reply and are herewith transmitted.

Having since carefully inspected the Maps, No. 1 and 2, and having patiently perused the various statements of the parties

1827.
11 March.

Report by
land board on
appropriation
of land by
H. Dangar at
Hunter river.

concerned, we are of opinion, from the progress you have already made in this investigation, that it is altogether unnecessary the Board should enter into a detailed exposition of the points at issue, as they can discover no grounds whatever for differing in the slightest degree from the decision, which His Excellency (through you) has already been pleased to pronounce in this case.

It is clear to the Board beyond all doubt that Mr. Henry Dangar has a priority of claim to select his reserve of 1,300 acres; but it is equally clear that, after he had done so, Mr. McIntyre had also an indisputable claim to select whatever extent of Land was still required to complete the number of acres, ordered by Government for his constituent, Mr. McQueen, as well as for himself and his Brothers, before the Messrs. Dangar could be permitted to make any further selection whatever.

A simple inspection of the Maps, laid before the Board, renders it at once evident that serious blame attaches to the conduct of Mr. Henry Dangar, as a public Officer in the employment of the Surveyor General's Department, for not only reserving, and appropriating to himself and his Brother in an improper manner, large tracts of the richest and best watered Lands in the District, in which he acted as a Public Surveyor, but also for making highly irregular purchases of Government Orders for Land from Messrs. Dunn and Rapsey before such Land had been located to, or even selected by those Individuals. It appears, by reference to the Map No. 1, that, posterior to his purchase of the Orders in question from those persons, he measured off the Land, he had so purchased, immediately adjoining to what he had appropriated to himself and his brother, inserting on the Map the names of Dunn and Rapsey for the land so purchased, as if they themselves had been actually and *bona fide* put in possession of it; and thus, by an irregular and clandestine transaction, he attempted to monopolize for himself a still greater extent of the richest alluvial land to the total exclusion of the complainant and others, who had a just and preferable right to select their Lands in that situation.

The purchase also of the Orders for the Land in question before the Individuals, holding those Orders, had either selected or obtained possession of their land was in direct violation of all the salutary Regulations, under which Land had hitherto been granted by Government; the breach, therefore, of Regulations, so indispensable to the just and regular distribution of Lands, was peculiarly culpable, when practised by a public Officer, engaged at the time in the actual Survey of those very Lands, and whose special duty it consequently was *rigidly to adhere to*

the Established Regulations in making a just and impartial distribution of the Lands, he was thus ordered to survey and measure off to Settlers.

We are led to these observations from its being clear beyond a doubt that the Individuals, who had obtained those orders for Land, had never been put in possession of it themselves; he therefore, evidently purchased their Orders with the view of availing himself of the opportunities, which, as surveyor of the District, he possessed of selecting the Land so purchased in the situation, which best suited his own purposes; and, by inserting the names of the original Grantees on the Map, the fact of the purchase would remain concealed from public observation, as long as was necessary to answer his views.

The splitting of sectional lines also, which a bare inspection of the Map will shew Mr. Dangar has unnecessarily practised in the admeasurement of his own Lands, and of those immediately adjoining thereto, is another breach of the Regulations, which have been established for the regular distribution of Crown Lands. This survey and admeasurement of all the Lands, now in dispute, has taken place since the arrival of His Excellency the present Governor in the Colony; and consequently it ought to have been executed in strict conformity with the Regulations, laid down in His Majesty's Instructions under the Sign Manual.

The subdivision and splitting of sectional lines is certainly in direct opposition to the spirit of those Instructions. By reference to the 39th Paragraph, it will be seen "that Charts of Parishes are to be prepared with division lines, by which the whole of every Parish will be divided into lots of 640 acres each, every such Lot of one square mile to be numerically marked on each chart, and all offers for purchase and Grants of Land effected shall be made with reference to such chart and divisional lines." By the 47th paragraph of the King's Instructions, it will also be seen that Grants of less than 320 acres, or half a Section, are prohibited unless in the immediate vicinity of Towns and Villages.

The Board view, therefore, with no small degree of surprise the Surveyor General's attempt (in his Letter addressed to you on the 8th September last) to defend Mr. Dangar's conduct in the unnecessary splitting of sectional lines, a system of measurement, which appears not only in direct opposition to the King's Instructions, but which, if permitted, would withdraw a very salutary check on the conduct of Surveyors, and would introduce endless confusion and complaints, which a due adherence to the Instructions under the Sign Manual can alone effectually prevent.

1827.
11 March.

Report by
land board on
appropriation
of land by
H. Dangar at
Hunter river.

1827.
11 March.

Report by
land board on
appropriation
of land by
H. Dangar at
Hunter river.

In your letter to the Board of the 8th Ultimo, you distinctly state that you had requested of the Surveyor General's Department "to furnish you with a new Map, shewing the several Selections made by the parties concerned, in obedience to His Excellency's decision"; and that the Map No. 2 was accordingly prepared; but that, instead of being confined to the Selections, which you considered as settled, you found that it contained several other allotments of Land to Mr. Henry Dangar and his brother, and that the 1,300 acres, which Mr. Henry Dangar was allowed first to select, were transferred to his brother William's name. You also found that the Western Boundary Line of Macqueen's land was drawn differently from what you had directed, in consequence of which you had objected to the Map," etc.

A bare inspection of the Map in question has been at once sufficiently convincing to the Board that your conclusion was perfectly correct. The stretching of the Western Boundary of Macqueen's Land beyond the regular sectional line to the disarrangement of all the other sectional lines, through which it runs, contrary also to your express instructions and to the remonstrance of Mr. Macqueen's Agent, was a proceeding altogether inexcusable; and the only rational conclusion, which the Board can arrive at in forming an opinion of conduct, so disobedient to the Orders of Government, is a presumption that the Map in question has either been made out by Mr. Dangar himself or by some other person, who acted under his immediate influence.

On taking a deliberate review, therefore, of the whole of this case, it appears to be clear beyond all doubt that the conduct of Mr. Henry Dangar, throughout the whole of these proceedings, has been reprehensible in the extreme; and it would be holding out a very proper example to the other surveyors, who now are or may hereafter be employed in that Department, if Government came to the resolution of depriving him of the whole of the Lands, he has so improperly appropriated to himself at Hunter's River, with the exception of his Reserve of 1,300 acres, which it has already been determined upon he should be allowed to receive there, permitting him to make his selection of the rest of the Land ordered in some other District, with the survey and distribution of the Lands in which he is totally unconnected. Should the Government, however, determine to strike at once at the root of the evil, and thereby effectually prevent their time and attention being again occupied with complaints of a similar nature, the necessity of an immediate Regulation becomes apparent, which will exclude all Persons, acting as

Surveyors or Draftsmen or in any other capacity in the Surveyor General's Department, from receiving any Grant of Land whatever during the period they may be so employed. It would be reasonable, however, in such case, and it would operate as an incentive to exertion and good conduct, if, at the end of five years or of such longer period of service as His Excellency might judge proper, the Surveyors and others employed in that Department should receive Grants of Land proportioned in extent to the length and value of their public services, and as a reward for good conduct and exertion during the period they may have served in the Department.

Before concluding this Report, we presume it may be necessary to advert to the Letter of Mr. William Dangar, addressed to His Excellency the Governor on the 28th of October last (marked H), and referred to the Board. Although we have strongly recommended the expediency of depriving Mr. Henry Dangar as a public Officer of a portion of the Lands, he has appropriated to himself in so improper a manner at Hunter's River, suggesting that he may be allowed a section elsewhere of such Land as he is justly entitled to, still we are induced to submit for consideration that, as his Brother William Dangar came out to this Colony with the sole view of becoming a Settler, it might be deemed too severe a measure to deprive him also of the selection of his lands at Hunter's River, as it would apparently be punishing him for his Brother's misconduct; we, therefore, respectfully submit for His Excellency's consideration that, after the Agent of Mr. Macqueen shall have made a further selection sufficient to complete the number of acres, ordered by Government to his constituent and to himself and Brothers, Mr. William Dangar shall thereafter be at liberty to select the 2,800 acres, which were ordered him by Grant or by Purchase by Sir Thomas Brisbane; as it is evident there will still be more than a sufficiency of unlocated Land in that part of the River, from which he may make a selection to that extent. In such case, however, we are decidedly of opinion that his Brother Henry Dangar ought to be peremptorily prohibited from making any transfer to him of his Reserve of 1,300 acres, or of any other portion of the land he has lately selected there; a measure which would only be resorted to by himself and his Brother for the sole purpose of counteracting the decision of Government.

Before concluding this report, we should have felt it our duty to have animadverted on the intemperate and unbecoming language, made use of by the Complainant in one or two of his communications to Government in this case; but we now consider it unnecessary, as he has solicited and obtained permission

1827.
11 March.

Report by
land board on
appropriation
of land by
H. Dangar at
Hunter river.

1827.
11 March.

Report by
land board on
appropriation
of land by
H. Dangar at
Hunter river.

to withdraw the offensive letter, addressed to His Excellency on the 9th Ultimo; and we have every reason to believe from the regret, which he has personally expressed to us, that he is now fully sensible of the impropriety of the language, which he says he has inadvertently made use of in that and another letter, addressed to you, without the most distant intention of giving offence to any Member of Government.

We have, &c.,

WILLIAM STEWART. WILLIAM LITHGOW.

[Enclosure No. 2.]

GOVERNOR DARLING'S MINUTE TO THE COLONIAL SECRETARY.

No. 23.

Government House, 14th March, 1827.

Censure and
suspension of
H. Dangar.

HAVING considered the report of the Land Board, dated the 28th February, 1827, on the subject of the Lands, claimed by Mr Peter McIntyre on the one hand, and by Messrs. Henry and William Dangar on the other, it appears that the conduct of Mr. Henry Dangar has been so highly derogatory to his duty as a public Officer, as to render it imperative on the local Government to mark its disapprobation of his proceedings by suspending him from his situation as Assistant Surveyor, until the Secretary of State's pleasure shall be known, and further to direct, in order to check any similar dereliction of duty on the part of Officers, who from interested motives might be regardless of what is due to the station, they fill, that Mr. Dangar shall not be permitted to occupy or select any lands until the decision of the Earl Bathurst is received in his case.

Instructions
re selection
of land.

Let the necessary notification be made to the Surveyor General, and let it be further signified that Mr. Peter McIntyre will be permitted to complete the 20,000 acres, ordered for Mr. Macqueen, and 4,000 acres for himself; and, after these Lands shall have been selected, that Mr. *William Dangar* will be at liberty to select 2,800 acres by grant and purchase, agreeably to the permission he has received, it being understood that the disposal of the 1,300 acres, marked A on the Map, No. 2, which were selected by Mr. Henry Dangar, will be reserved for the decision of the Secretary of State.

RA. DARLING.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 40, per ship *Magnet*; acknowledged by the right hon. W. Huskisson, 1st October, 1827.)

12 March.

Trial of pirates
from brig
Wellington.

My Lord,

Government House, 12th March, 1827.

I have the honor to acquaint your Lordship, in reference to my Despatch No. 21/1827, that the trial of the Pirates, who seized the *Wellington* on the passage to Norfolk Island, took

place before the Supreme Court on the 21st Ultimo. Thirty one were arraigned (the other Prisoners not having participated in the transaction), eight of whom were acquitted, and twenty three were sentenced to suffer Death.

1827.
12 March.
Trial of pirates
from brig
Wellington.

The cases of those condemned to suffer were immediately brought under the consideration of the Executive Council; and I do myself the honor to transmit for your Lordship's information a copy of the Minute of proceedings, by which it will be seen that the Council recommended that six only should be executed.

As soon as these men were ordered for Execution, the Jury from certain circumstances, which appeared in favor of the Prisoner *Douglass*, petitioned that his life might be saved, and the Serjeant of the Guard and two of the soldiers represented through their Commanding Officer that Douglass had been the means of preserving their lives, when the Prisoners seized the Vessel, and they were induced in consequence respectfully and humbly to entreat that he might be spared.

Commutation of
sentence on
W. Douglass.

I was induced from this circumstance to submit the matter to the Council, and it being considered that an Individual, who had been so conspicuous for his humanity, had more than an ordinary claim to mercy, his sentence was commuted to Transportation for Life to Norfolk Island.

I have, &c.,

RA. DARLING.

[Enclosure.]

MINUTE OF EXECUTIVE COUNCIL.

Executive Council, Friday, the 2nd March, 1827.

Present:—His Excellency the Governor; His Honor the Lieut't Governor; His Honor the Chief Justice; The Venerable the Archdeacon; The Colonial Secretary.

Minute of
executive
council re
sentences
on pirates.

The Minute of the former proceedings was read and confirmed.

His Excellency The Governor submitted the Report of His Honor The Chief Justice in the case of the Prisoners, convicted of Piracy in assaulting the Master of the Brig *Wellington*, while on her Voyage from Sydney to Norfolk Island, and piratically seizing the same and carrying her to New Zealand, viz. John Walton; William Douglass; John Edwards; Charles Hay, alias Todhunter; James O'Neil; John Smith; Richard Hicks; William Brown; Edward Colthurst; Charles Daley; William Ryan; Patrick Flannighan, alias Russel; Richard Johnson; William Liddington; Henry Drummond; John Boyd; William Holt; Richard Carter; Thomas Bayley; John Swan; Thomas Edwards; William Walker and William Bateman.

1827.
12 March.
Minute of
executive
council *re*
sentences
on pirates.

His Honor the Chief Justice read the Notes he made of the Evidence on the Trial of the prisoners, and detailed various circumstances connected with their several cases, which transpired in the course of the Proceedings.

After much careful investigations into the cases of the Individuals, the Meeting was adjourned until Monday, the 5th Inst.

Council Chamber, Monday, 5th March, 1827.

Present as before.

The case of the Pirates was again brought under consideration, and the Council endeavoured, with the utmost anxiety, to ascertain which amongst the Prisoners seemed least deserving of clemency, either in consequence of their violent conduct whilst effecting their purpose, or from the vicious course of their former lives.

Amongst the Prisoners were several Respites from Death, and in determining on those, who should be selected on the present occasion to serve as Examples, this abuse of the mercy previously extended to them was forcibly adverted to.

After much mature deliberation, the six under mentioned Individuals were fixed on, and the Council recommended that they should be ordered for Execution, viz.

William Douglass, John Edwards, John Smith, Edwd. Colthurst, Richard Johnson and Wm. Liddington.

The Council was induced to recommend that the Sentence of Death, in the case of John Walton, the person who acted as Captain, should be commuted to Transportation to Norfolk Island and hard labor in chains during his natural life; and it was principally influenced in its recommendation by the circumstances of moderation and humanity, which marked his conduct after the capture of the *Wellington*, as likewise in consideration of the Offence, for which he was sentenced to be transported to Norfolk Island, being his first transgression and not a Capital Crime.

His Excellency then submitted the case of Patrick Martin convicted of stealing a cow and calf at Bathurst, and His Honor,

RA. DARLING.

H. DUMARESQ, Clerk of the Council.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 41, per ship Magnet; acknowledged by right hon. W. Huskisson, 17th February, 1828.)

13 March.

My Lord,

Government House, 13th March, 1827.

I do myself the honor to transmit to your Lordship copy of a Petition from Mr. Robert Duke, Master of the Ship *Sisters*, by whom the Brig *Wellington*, which had been piratically seized

by the Prisoners of the Crown in their passage to Norfolk Island, was recaptured, praying for remuneration on the part of himself, the owners, and crew of the said ship, in consequence of the loss, which they sustained in being prevented from prosecuting the object of their voyage.

1827.
13 March.

Petition of
R. Duke for
compensation.

Being myself unable to determine what would be a reasonable allowance in such case, I availed myself of the presence of the Honble. Captain Rous and Captain Wetherall of His Majesty's Navy, and requested they would meet Mr. Jones, a respectable merchant of Sydney, who is engaged in the Whale Fishery, and consider the remuneration, to which the persons concerned in the *Sisters* might be entitled.

I have now the honor to forward a copy of the Report of these Gentlemen, by which it will be seen they are of opinion that £1,800 will be a sufficient remuneration for the time lost by the *Sisters*, and for the salvage of the Hull and Cargo of the Brig Wellington, to which they may be considered as having a claim.

Compensation
recommended.

I have informed Captain Duke that, instead of settling his claim here, I should refer the Report and his Petition for your Lordship's consideration, in order that such remuneration, as might be determined on, should be paid to the Owners at Home. I beg leave to add that, having represented that he required an advance of £300 to provide the necessary supplies for his voyage, I have authorized that Sum to be issued on account of his claim; and I have further directed him to be supplied with 524 lbs. of Gunpowder and three musquets, to replace the issue of those articles to the Natives at New Zealand, as rewards for apprehending and delivering up the Pirates who had absconded.

Advance made
to R. Duke.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

MEMORIAL OF ROBERT DUKE.

To His Excellency Lieutenant General Ralph Darling, Governor in Chief, etc., etc., etc.

The humble Petition of Robert Duke, Master of the Ship *Sisters* of the Port of London,

Petition of
R. Duke for
compensation
for losses
sustained in
re-capture of
brig
Wellington.

Sheweth,

That the Ship *Sisters* was fitted out for the Southern Whale Fishery, and sailed from London on the first of January, 1826; and, on the 26th December last, she went into the Bay of Islands in New Zealand for the purpose of refitting for the

1827.
13 March.

Petition of
R. Duke for
compensation
for losses
sustained in
re-capture of
brig
Wellington.

Whaling Season, then about to commence; at which place, your Petitioner found the Ship *Harriet*, Whaler, undergoing some repairs.

That, on Friday, the fifth day of January, a Brig came into the Harbour, which your Petitioner immediately recognized to be the Ship *Wellington*, belonging to Mr. Joseph Underwood, he having before seen her in this Port; your Petitioner accordingly proceeded on board, when he was informed that she was proceeding with Troops to make a Settlement in the River Thames in New Zealand.

That your Petitioner from many circumstances suspected the truth of this Statement; and, after some correspondence, discovered that she had left this Colony with Prisoners bound for Norfolk Island, and that they had captured her on the voyage; on which your Petitioner, with the concurrence of Mr. Clark, the Master of the *Harriet*, and the Missionaries, made preparations for retaking her, which object was accomplished on Sunday, the eleventh, when your petitioner extricated the Military Guard from imprisonment, and took measures for the general security of the Vessel and for the apprehension of such of the Prisoners, as had escaped into the Woods of New Zealand.

That the whole of the Prisoners, with the exception of five persons, having been retaken, your Petitioner, at the request of Mr. Harewood, the Master of the Brig *Wellington*, received into the Ship *Sisters* thirty two of the Prisoners, and, on the 28th January, proceeded from New Zealand, in company with the Brig *Wellington* (which Vessel had on board twenty seven of the Prisoners), to this Port, where she arrived on the 9th February instant.

That your Petitioner begs to submit to your Excellency the statement, contained in the Log Book of the Ship *Sisters*, and also your Petitioner's private Log, and entreat that your Excellency will afford to your Petitioner an opportunity of offering the testimony of the Master and Passengers of the Brig *Wellington*, and other persons respecting the transaction, as to your Excellency may seem meet.

That your Petitioner, in proceeding to this Port, was compelled to quit the Whaling Station at New Zealand at the commencement of the season, and which will be over before the return of your Petitioner to that or any other Whaling Station; and that your Petitioner, in proceeding to this Port, has occasioned a deviation in the voyage of the Ship *Sisters* that will make it necessary to effect a fresh insurance on the Vessel.

Your Petitioner, therefore, humbly prays that your Excellency will take your Petitioner's case into consideration, and

that your Excellency will make your Petitioner such allowance on behalf of himself, and the Owners and Crew of the said Ship *Sisters*, for the losses sustained by them, as to your Excellency may seem meet.

And your Petitioner will ever pray,

ROBERT DUKE.

Sydney, New South Wales,
19th February, 1827.

1827.
13 March.

[Enclosure No. 2.]

CAPTAIN ROUS AND OTHERS TO COLONIAL SECRETARY MACLEAY.

Sir, Sydney, 24th February, 1827.

In answer to your letter of the 23rd Instant, transmitting us the Petition of Mr. Robert Duke, Master of the Ship *Sisters*, and His Excellency's desire that we should estimate and report the Sums, to which Mr. Duke, the Owners and Crew of the Vessel under his command, are equitably entitled to for the capture of the Brig *Wellington*, piratically seized by Convicts in her passage from here to Norfolk Island. We are of opinion that the sum of One thousand, eight hundred pounds will cover the salvage of the Hull and Cargo of the said Brig *Wellington*, and remunerate the Master, Owners and Crew for their loss of time and the amount of Cargo, which, during the space of three months, they would have procured, had they remained on the Fishery. We have, &c.,

Compensation
recommended
by committee.

HENRY JOHN ROUS, Captn., H.M.S. *Rainbow*.

F. A. WETHERALL, Captn., H.M.S. *Fly*.

RICHARD JONES, Merchant, Sydney.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship *Guilford*: acknowledged by Governor Darling.
2nd August, 1827.)

Sir, Downing Street, 14 March, 1827.

14 March.

With reference to Earl Bathurst's dispatch of the 4th December last, I am directed to acquaint you that he has appointed Mr. John Abbott to proceed to New South Wales in the capacity of Assistant Surveyor, with a Salary at the rate of Two Hundred Pounds per annum, commencing from the date of his embarkation; and his Lordship trusts that this Gentleman's Services will be found useful to the Colonial Govern't.

Appointment
of J. Abbott
as assistant
surveyor.

I am, &c.,

R. W. HAY.

1827.
14 March.

UNDER SECRETARY HAY TO GOVERNOR DARLING.*

Recommendation of
R. Legge and
sisters.

Dear Sir,

Downing Street, 14th March, 1827.

Having received the inclosed letter from Lieut't General Vincent on the subject of a young man of his acquaintance, named Legge, and his four Sisters, who have determined to emigrate to New South Wales, I beg in compliance with his request to bring their names under your favorable notice. They appear to be of a very respectable family, and I am confident, therefore, I need not mention them more particularly to you to ensure to them your favour and protection.

I am, &c.,

R. W. HAY.

[Enclosure.]

LIEUT.-GENERAL VINCENT TO UNDER SECRETARY HAY.

Sir,

United Service Club, 10th March, 1827.

I had the honor of paying my respects to you yesterday, in consequence of some near Relations of mine proposing to go to Sydney, New South Wales, and to request your kindness in recommending them to the notice of Lord Bathurst.

They are *young*,† well educated, and wish to get a grant of Land in that Country, for which purpose they take, as part of their property, a Thousand to twelve Hundred, and to attempt making a fortune, which they were entitled to, had not their Father which for the times unfortunately become a Bankrupt.

I should not presume giving this long statement, had I not their prosperity at heart; and I hope His Lordship will be graciously pleased to take them under his kind consideration, and to excuse the request of an Old Soldier of forty five years services.

I have, &c.,

JOHN VINCENT, Lt. General.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 42, per ship *Magnet*; acknowledged by the right hon. W. Hiskisson, 27th December, 1827.)

My Lord,

Government House, 14th March, 1827.

In consequence of the Instructions from the Lords Commissioners of the Treasury, it has become necessary to establish a rule for estimating the value of work here, a great proportion of which is undertaken by the Government, being performed by the Convicts, who are also employed in procuring the Timber and

Valuation of
convict labour.

* Note 6.

† Marginal note.—Robert Legge; Eliza Legge; Lucy Legge; Fanny Legge; Aliecia Legge.

preparing the other materials made use of in Building, etc. I consequently called on the Civil Engineer and the Auditor to report their opinion, as to the most eligible course to be pursued in framing an estimate under the circumstances stated; and I have now the honor to forward, for your Lordship's consideration, a copy of the Report of these Officers, and to acquaint your Lordship that the expences of the Government Works will in future be estimated according to the principle, laid down in the Report, and reference will be made to your Lordship for the necessary authority, whenever the amount shall exceed the sum of £200, as prescribed by the Instructions of the Lords Commissioners of His Majesty's Treasury.

1827.
14 March.
Valuation of
convict labour.

I have, &c.,
RA. DARLING.

[Enclosure.]

MESSRS. DUMARESQU AND LITHGOW TO COLONIAL SECRETARY
MACLEAY.

Sir,

Engineer's Office, 12th March, 1827.

With reference to your Letters of the 19th Ultimo, relative to the limits of Expence to Buildings being determined at £200, and calling for Plans and Estimates of those proposed for Norfolk Island, and in pointing out the Principle, upon which those Estimates should be framed, desiring our joint opinions thereon, We have the honor to observe that in these points we have been led to the opinion that Estimates generally should be divided under the two heads of *Labour* and *Materials*.

Division of
estimates into
labour and
materials.

Labour, we proposed, should be calculated at what each convict in the employ of Government may actually cost, allowing for the expenses incident to maintaining the different Establishments for their control and discipline; and we are of opinion that 1s. 3d. per day each man will be sufficient to cover these expenses. This charge for Labor, however, ought only to apply to Establishments not considered penal.

Valuation
of labour.

Penal Settlements being in the situation to furnish the Labour from Convicts, who under every situation must be supported at the expense of the Crown. We are therefore disposed to the Opinion that, in estimating for Buildings at those Settlements, the Labor of the Convict should not be charged in the Estimate.

Convict labour
at penal
settlements.

Building materials, purchased in the Colony or supplied from England, should be supplied at the average cost price to Government, the Officer of the Commissariat furnishing the prices of Tools and such Stores, of which he has the charge. It appears

Valuation of
building
materials.

1827.
14 March.

for some few years back priced Invoices had not been transmitted to the Commissariat Department; to remedy which deficiency, it will perhaps answer to put on 50 per cent. on Prices, taken from the Published London Price Book, and be guided by it.

Materials
produced by
convict labour.

All the Materials, requisite to Buildings, not produceable from the Stores of the Commissariat, such as Wood, Bricks, Stone, etc., may, circumstanced as this Government is, be reducible to Labour, the article itself costing nothing to produce but the labor of a certain number of convicts.

Price of
materials.

From the calculations made, we are of opinion that the following prices may, therefore, be fixed upon for the materials, above alluded to, in estimating for Buildings in the Colony, exclusive of the Penal Settlements, viz.

Lime, hair and all other articles, obtained by contract, to be charged at the contract prices.

Timber to be charged at a penny a running foot, average of all kinds, and scantlings.

Bricks—When made in situations, where the wood to burn them is purchased, viz. Sydney, at 12s. a thousand; when wood is supplied by labor, 8s.

Stone—Rough Stone Walling, 3s. a Perch; Dressed ashler, 4d. a superficial foot; do. Flagging, 1½d.; do., when common Steps or corner work, 6d.

Shingles 5s. a thousand.

Laths 5s. 6d. Do.

Under this arrangement, the usual form of Estimate can be continued.

Valuation
of labour;

Labour for the number of men required to erect the Building (the material being put into their hands) to be estimated at 1s. 3d. a day each.

and of
materials.

Materials to be estimated from the prices furnished by the Commissariat, and at those calculated when the produce of Labour.

We have, &c.,

WM. DUMARESQ, Captain, Civil Engineer.

WM. LITHGOW, Audr. of Col'l Accts.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 10, per ship Guilford; acknowledged by Governor Darling, 28th July, 1827.)

15 March.

Sir,

Downing Street, 15 March, 1827.

I have the honour to acknowledge the receipt of your dispatch, marked "Separate," of the 4th of September* last.

* Note 42.

recommending that Captain Dumaresq of the Staff Corps be appointed Deputy Surveyor General with a Salary of £500 per annum. The arrangements, which I have already made for placing this Department upon a more efficient footing, as communicated to you in a former dispatch, will not allow of my appointing Captain Dumaresq to the above situation, for which indeed another Officer had been previously selected. Under these circumstances, I can only offer to Captain Dumaresq the situation of Civil Engineer; to which, should he accept the appointment, you will consider yourself authorized to attach a Salary of £500 per annum; but, in this case, it must be understood that Captain Dumaresq retires on half pay, and that his time must be exclusively dedicated to the duties of that Department.

I have, &c.

BATHURST.

1827.
15 March.

W. Dumaresq
to be offered
appointment as
civil engineer.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 11, per ship Guilford; acknowledged by Governor Darling, 2nd August, 1827.)

Sir,

Downing Street, 16 March, 1827.

16 March.

I have the honour to acknowledge the receipt of your dispatch, No. 71 of the 13th September last,* in which you inform me that, with the view of preventing the two Officers, whom you sent to Port Macquarie (Mr. Carter the Chairman of the Quarter Sessions and Major Gillman) to make a selection of those Prisoners, who might be withdrawn from that Settlement, from suffering any pecuniary loss on account of their expences, you had authorized the Sum of Seventy Pounds to be advanced to each of these Gentlemen; and I have to convey to you my approbation of the same, provided an allowance at the rate of £2 per diem is the usual remuneration granted under such circumstances.

Travelling
allowance for
H. Gillman and
W. Carter.

I have, &c.,

BATHURST.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 12, per ship Guilford; acknowledged by Governor Darling, 2nd August, 1827.)

Sir,

Downing Street, 16 March, 1827.

I have the Honor to acknowledge the receipt of your Dispatch of the 6th September last, No. 61, reporting the issue of Two Hundred Spanish Dollars to Mr. Gray, Government Pilot,

Payment
to pilot at
Moreton bay.

* Note 42.

1827.
16 March.

on account of certain extra Services performed by him in establishing the Penal Settlement at Moreton Bay; and I have much pleasure in acquainting you that the Remuneration, which you have made to this person, is approved by His Majesty's Government.

I have, &c.,

BATHURST.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 43, per ship Magnet.)

17 March.

My Lord,

Government House, 17th March, 1827.

I have the honor to transmit, in reference to your Lordship's Despatch, No. 66/1826, Copy of a Government Order, which I have considered it necessary to issue that the Inhabitants of Sydney may be apprized that convicts will not generally be assigned to them, as heretofore, and that they may consequently take steps for otherwise providing themselves with servants.

I have on several occasions of late adverted to the inefficiency of the Penal Settlements from the system of Indulgence, which appeared to have been introduced; and, as your Lordship has signified a desire that greater attention might be paid to the conduct of the Prisoners, I availed myself of the opportunity of noticing the above circumstance, and intimating my intention to enforce a more strict discipline at the Penal Settlements, than had hitherto been observed. The Papers will no doubt avail themselves of this as a means of irritating the Convicts against the Government. But the measure is necessary, and the licentiousness of the Press must not deter the Government from the performance of so important a duty.

I have, &c.,

RA. DARLING.

[Enclosure.]

GOVERNMENT ORDER.

No. 13.

Colonial Secretary's Office, 16th March, 1827.

HIS MAJESTY'S Government considering that the practice of assigning convicts to persons residing in Sydney has in a great measure defeated the purposes of Transportation, inasmuch as it prevents it from being the means of reformation to those Individuals, who have rendered themselves liable to that description of punishment, or an object of terror to others, the Secretary of State has directed that Convicts should, as far as may be possible, be assigned to persons established up the country, in order that they may be placed out of the reach of enjoyments, which are open to those who reside in the Town.

His Excellency the Governor, in making this Communication, avails himself of the opportunity to notify, in furtherance of the

Abolition of
assignment
system at
Sydney.

Discipline of
convicts at
penal
settlements.

Government
order re
assignment of
convicts at
Sydney and
discipline
at penal
settlements.

views of His Majesty's Government, that the Penal Settlements will henceforth be conducted on the principles of their Institution. They were intended as places of Punishment; and nothing, which shall tend to deprive them of their proper and legitimate character, will in future be permitted.

Every one, by an honest and decorous course of life, may avoid being sent to a Penal Settlement. If, regardless of what he owes to Society, a man voluntarily and wantonly plunges into vice and indulges in evil propensities, he relinquishes every claim to Indulgence, and must submit to the Punishment due to his crimes.

The System, which induced some of the Prisoners withdrawn from Port Macquarie to desire to be sent back rather than be assigned to the Settlers, is at an end. And it is to be wished that a knowledge of this fact may have a proper effect on the minds of such of those, who, heretofore, have committed crimes without any apprehension of the consequences of Transportation.

The indiscriminate sale of articles at the Penal Settlements will not be permitted.

No person in the employment of Government, or Prisoner, or the wife of a Prisoner will in future be allowed to keep a shop or sell goods or articles of any kind.

Two free persons will be licensed at each of the Penal Settlements to sell certain Articles under the control of the Commandant.

The following Regulations, with a view to prevent the Introduction of Spirits and other unlicensed articles into the Penal Settlements, are to be strictly enforced.

1st. Persons, desirous of having any supplies sent from Sydney, are to submit a list of the Articles to the Commandant (the quantities being stated in words at length), who, if he sees no objection, will sign the list as being approved by him, and will forward a copy to the Colonial Secretary.

2nd. The persons applying will forward the approved List to their correspondent in Sydney, who will apply to the Colonial Secretary for permission to ship the Articles.

3rd. The application must be made at least 24 hours before the departure of the Vessel.

4th. Wine and Spirits will be allowed to be shipped for the Officers only. Application for such supplies, as they may require, are to be made as in other cases.

5th. When a Vessel is ready to proceed from Sydney as above, the Master attendant will make out and send to the Colonial Secretary a list of the passengers and Prisoners, together with a Manifest or Statement of the Public Stores, and of the Packages shipped on account of private Individuals.

6th. This List and Statement will be forwarded to the Commandant; and no person or article is to be landed, until he shall have given orders to that effect. Any Master of a Government Vessel disobeying these Orders will be immediately dismissed.

7th. As soon as communication can be had with a vessel arriving, the Commandant will send a Guard on board, which must be relieved frequently, and the Vessel be visited, as often as circumstances will permit, by an officer or other confidential person.

8th. Care must be taken to ascertain whether the Cargo agrees with the Manifest. All articles, not specified in the Manifest, are

1827.
17 March.

Government
order re
assignment of
convicts at
Sydney and
discipline
at penal
settlements.

1827.
17 March.

to be secured and lodged in the public stores. The Commandant will report to the Colonial Secretary the particulars, and for whom the Articles are intended.

The above Order to be immediately published by the Commandants of the respective Settlements.

By His Excellency's Command,

ALEX. MCLEAY.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 44, per ship Magnet; acknowledged by the right hon. Wm. Hiskisson, 31st October, 1827.)

18 March.

Correspondence
with
J. Mackaness.

My Lord,

Government House, 18th March, 1827.

I am under the necessity of troubling your Lordship on the subject of a correspondence, which has taken place with Mr. Mackaness, embracing two points: first, the salary and allowances, to which he is entitled as Sheriff; secondly, the extent of his duties and responsibility, and the power of the Government to control him.

Salary and
allowances
claimed by
J. Mackaness.

1st. Mr. Mackaness having been called on to pay in the Fees he had received agreeably to the existing Regulations, he addressed a letter to the Colonial Secretary, of which I do myself the honor to enclose a copy; by which, it will be seen that, in addition to the salary of £1,000 a year fixed by your Lordship, he has been in the habit of charging his travelling expences, dinners to the Magistrates, etc. And, as it appeared he had drawn a further sum of £91 5s. under the head of salary as Provost Marshall from the time of his arrival here, I desired he might be called on to point out the authority, under which he considered himself entitled to such salary; and I beg to enclose a copy of his reply for your Lordship's information.

Though I do not consider Mr. Mackaness entitled to any further salary than that fixed by your Lordship, still, as he had received the additional sum by the Order of my predecessor, I have not felt myself authorized to call on him to refund or account for this money.

On this point, I have only to request your Lordship's Instructions, whether Mr. Mackaness is entitled to a separate salary as Provost Marshall, and whether he is to charge his Travelling Expences and the sums expended by him in Entertainments to the Magistrates, as specified in Enclosure No. 1?

Duties and
status of
J. Mackaness.

2nd. The second branch of the correspondence relates to his immediate duties and the Control of the Government.

Doctor Halloran and Mrs. Shortt, his daughter, being both in Jail, the former for debt and the latter for theft, I was incessantly interrupted by complaints and appeals from these people,

in consequence of the disorders and irregularities which, as they stated, existed in the Jail. The enclosed copy of a letter, addressed to me by Doctor Halloran, will put your Lordship in possession of some of the facts.

1827.
18 March.
—
Duties and
status of
J. Mackaness.

Having understood that Mr. Mackaness did not consider himself chargeable for the conduct of the Jail, though every person employed in it has hitherto been appointed by him, and having reason to believe that it was not properly superintended by him, it appeared to me of importance that the matter should be properly understood; and I, therefore, directed the Colonial Secretary to write to him, pointing out that, if he had attended to this necessary part of his duty, the irregularities, which had taken place, and the vexatious complaints, which had been made, would both have been prevented.

It will be seen by his answer that Mr. Mackaness does not consider it to be his duty as Sheriff to visit the Jail; and, as the attention he paid to it was, as he states, at the request of Sir Thomas Brisbane, it is evident he does not consider himself subject to the control of the local Government. I directed the Colonial Secretary, in consequence, to write to Mr. Mackaness, according to the enclosure specified in the margin,* in order that he might clearly understand that I considered him responsible for the proper conduct of the Jail.

I must beg to trouble your Lordship with the perusal of another letter from Mr. Mackaness, which marks even more strongly than the former his opinion that the Government has no authority to interfere. The letter, to which that now alluded to is in answer, was written in consequence of the improper indulgence, which it appeared has been shewn to some of the prisoners when in Jail, who afterwards piratically seized the Brig Wellington. The characters, given of these people by the Jailer on their removal, led to undue confidence being placed in them, by which they were the more easily enabled to accomplish their purpose. But it appears Mr. Mackaness does not consider the Officers of the Jail to have been in fault; and he goes on to state that he supposes the necessary regulations for the Jail will be made by *those, who have authority to make them*, insinuating pretty broadly that the Government had no right to interfere in the matter.

In your Lordship's Despatch to Sir Thomas Brisbane, dated the 22nd January, 1824, No. 6, notifying Mr. Mackaness's appointment as Sheriff, after giving an outline of his duties, your Lordship is pleased to desire that "you will not understand

* Marginal note.—17th Feby., 1827.

1827.
18 March.

Duties and
status of
J. Mackaness.

these directions as an accurate specification of the duties to be executed by the Individual, but merely a general summary for your guidance," evidently, as I conceive, leaving it to the Governor to give him such further Instructions as may be necessary.

I do myself the honor to enclose the copy of a letter from Mr. Carter, the Master of the Supreme Court, by which it appears, even supposing Mr. Mackaness's situation to be precisely the same as a Sheriff in England, that he is responsible for the conduct of the Jail. But it may be presumed from the peculiar nature of his appointment that he is more immediately responsible to the Government than a Sheriff is in England.

I shall not permit myself to comment on Mr. Mackaness's correspondence, or on the independence he has assumed. Your Lordship will judge whether he is justified in the ground he has taken, or whether, in the present circumstances of the Colony, Mr. Mackaness's services, from his general character and the disposition he has evinced, are likely to prove beneficial to the Government.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

J. MACKANESS, SHERIFF, TO COLONIAL SECRETARY MACLEAY.

Sir,

Sheriff Office, 8th February, 1827.

Allowances
claimed by
J. Mackaness.

The enclosed accounts were sent to Mr. Lithgow, prior to the end of the last Quarter; and, not being attended to, I transmit them to you, in pursuance of your Advertisement desiring all persons having claims on the Colonial Treasury to transmit duplicate to you.

I also request you to communicate to His Excellency the Governor that I consider I am entitled, by my Lord Bathurst's letter to Sir Thomas Brisbane of 25th October, 1825, to deduct the necessary expense, I incur by going to and attending the several Quarter Sessions from the Fees I receive; and I presume, when His Excellency directed that I should pay the full amount of the Fees into the Treasury and receive Warrants for the Expenditure, He did not mean to diminish my income, which my Lord Bathurst states shall be a net £1,000 a year.

I have not kept an accurate account of my expenses in attending the different Sessions; but I believe they have each year exceeded £80. It cost me £16 attending at Newcastle, although I was detained there only three days; and I am informed the expense cannot be averaged at less than £25 a Session.

I have, &c.,

J. MACKANESS.

[Sub-enclosure.]

ABSTRACT of Disbursements incurred and paid by the Sheriff of New South Wales as per account transmitted to the Auditor's Office to 30th December, 1826.

1827.
18 March.

Allowances
claimed by
J. Mackaness.

1826.		£ s. d.	£ s. d.
Jany. ..	Paid dinner Fee to 6 Magistrates at the Quarter Sessions at Liverpool at	ss. ea.	
May	Ditto to 6 Ditto at the Quarter Sessions at Parramatta	"	
July	Do to 7 Do at the Quarter Sessions at Liverpool	"	
Octr.	Do Do 4 Do at the Quarter Sessions at Parramatta	"	
Octr. 16 and 18	The following expenses incurred in Executing the sentence of the Law on 3 Malefactors at Burwood. 2 " at Parramatta. 2 " at Irish Town. Paid Horse hire for the under Sheriff, Chief Constable, and Depy. Gaoler, 2 days	3 5 0 1 5 0	9 4 0
Decr. ..	Travelling Charges		4 10 0
	Incidental expenses of Office. Paid binding the Gazettes for the year 1825 into one Volume for use of the same		0 11 0
	Sterg. £	14 5 0	

I certify the above to be correct:—J. MACKANESS, Sheriff.

[Enclosure No. 2.]

J. MACKANESS, SHERIFF, TO COLONIAL SECRETARY MACLEAY.

Sir. Sheriff Office, 17th February, 1827.

I regret the mistake in my account, alluded to in your letter of the 12th Instant; how it occurred, I know not. It could not be intended to mislead His Excellency, as he must from documents know that the £91 5s. is my salary as Provost Marshal, voted by the House of Commons, and paid me half yearly by Mr. Wemyss from the 21st June, 1824, to the 21st June last. On the 30th of December last, I received a letter from you stating that a Warrant had been lodged with the Colonial Treasurer to pay the sum of £45 12s. 6d. Sterling, being the amount of my Salary as Provost Marshall of New South Wales from the 1st of July to the 31st December last, at the rate of £91 5s. per annum.

Salary as
provost marshal
claimed by
J. Mackaness.

I have, &c.,

J. MACKANESS.

[Enclosure No. 3.]

L. H. HALLORAN TO GOVERNOR DARLING.

Sir, Sydney Prison, 8th December, 1826.

With extreme reluctance, I feel myself constrained to intrude, upon your Excellency's important avocations, the minor concerns of individual or partial grievance. But I do so with

1827.
18 March.

Criticism
of gaol
administration
by L. H.
Halloran.

perfect confidence that, under Your Excellency's Administration, the proof of an existing abuse will insure its immediate correction.

By an Affidavit of Mr. H. Steel, the Gaoler of this Prison, it is deposed that "the Apartments for Debtors are wretched"; by painful experience, I am enabled to confirm this statement. But, to the discomfort and inconvenience of those very "wretched apartments," the Gaoler himself has lately unnecessarily added.

Your Excellency, by a general notification published some time ago, declared your determination not to extend any lenity or indulgence to "receivers of stolen goods." On the 5th Instant, a person, previously of very questionable character, was committed to this Gaol on conviction of having received "stolen Government property." Instead of being placed among felons under similar conviction, this man was not only exempted from the usual infliction of wearing Irons, but a room, hitherto used as a Kitchen for the Debtors and Fines, was assigned for his accommodation, on his payment of a weekly donceur for such Indulgence: such is the magic influence of Dollars, *hic et ubique!!!*

This I consider not only a palpable contravention of Your Excellency's announced determination, and a corrupt abuse in the Gaoler, but a hardship on the parties, above alluded to, who have now no convenience for cooking their meals, except at the "Private Houses," if they have any, as is the case with myself.

On this subject of annoyance, in the first instance I dictated a short note of remonstrance to the Gaoler, which produced only insult and threats: insults, which, under other circumstances, he would not presume to offer: and Threats, which I hold in equal contempt with their author.

I submit to Your Excellency's consideration these facts, of which I challenge contradiction; and I solicit the interposition of your authority for the correction of such malversation in the Department, to which my complaint refers.

I have, &c.,

L. H. HALLORAN.

[Enclosure No. 4.]

COLONIAL SECRETARY MACLEAY TO J. MACKANESS, SHERIFF.

Sir, Colonial Secretary's Office, 27th December, 1826.

I have had the honor to receive your letter of the 23rd of this month, respecting the result of an enquiry made into

the complaints, lately preferred by Dr. Halloran against the Sydney Gaoler, and have submitted the same for the consideration of His Excellency the Governor.

1827.
18 March.

On this subject, His Excellency has directed me to point out to you the expediency of your visiting the Gaol, more frequently than appears to have been your practice from recent occurrences, in order that you may have an opportunity, personally, of ascertaining whether the Prisoners have any ground of complaint, and of redressing them immediately, should such be the case. Had this necessary part of your duty, I am commanded to add, been properly attended to, the irregularities, which have taken place, would have been prevented, and the vexatious representations of the Prisoners would not have been obtruded on the Government, as they have been.

Censure of
J. Mackaness
for neglect
of gaol.

I have, &c.,

ALEX. MCLEAY.

[Enclosure No. 5.]

J. MACKANESS, SHERIFF, TO COLONIAL SECRETARY MACLEAY.

Sir,

Sheriff Office, 17th January, 1827.

In reply to your letter of the 27th December, 1826, I submit that His Excellency the Governor, before he censured me for neglecting my duty, should have notified to me the evidence, on which he drew such conclusion. I am not aware of any Law or Custom, which directs me as Sheriff to visit the Gaol, and I know of no authority I have to redress any grievance or make any regulation for its internal management.

Control of gaol
declined by
sheriff.

That most humane and admirable Statute of 4 Geo. 4, C. 64, should I presume be carried into effect by the Justices here, as far as the condition of the Colony will allow.

The attention, I paid to the Gaol, was at the request of Sir Thomas Brisbane. As His Excellency is dissatisfied with my conduct, I must decline interfering, in what I consider the duty of the Justices, unless I receive His Excellency's commands on the subject.

I have to request, however, that proper apartments be made for the Debtors and for the Governor of the Gaol, whose residence within the walls is absolutely requisite to prevent those irregularities, which have been complained of.

I have, &c.,

J. MACKANESS.

[Enclosure No. 6.]

COLONIAL SECRETARY MACLEAY TO J. MACKANESS, SHERIFF.

Sir, Colonial Secretary's Office, 17th February, 1827.

Having submitted to the Governor your letter of the 17th Ultimo on the subject of your attending to the management of the Gaol, I am directed to inform you that it appears to the

1827.
18 March.

J. Mackaness to
be responsible
for management
of gaol.

Governor that the Act of 4 Geo. 4, Cap. 64, to which you refer, does not interfere with your duty, or diminish your responsibility as Sheriff; and that, as you appointed the persons employed in the Gaol, He must consider you responsible for the proper conduct of that Establishment.

Although, therefore, you may have attended the Gaol to oblige Sir Thomas Brisbane, the present Governor would not feel himself justified in receiving, as a favor to the Government, the performance of those duties, which it appears to His Excellency you are bound by your public situation to discharge.

I am directed to add that it is the intention of His Excellency to refer your Letter to the Secretary of State, in order that He may receive the necessary Instructions.

I have, &c.,

ALEX. MCLEAY.

[Enclosure No. 7.]

J. MACKANESS; SHERIFF, TO COLONIAL SECRETARY MACLEAY.

Sir,

Sheriff Office, 23rd February, 1827.

Want of
regulations
for control
of gaol.

I have enquired into the removal of Walton and others on the 28th September last, and I do not consider the Officer of the Gaol in the least degree culpable. There are no regulations, sanctioned by the Magistrates and approved of by the Chief Justice, for the guidance of the persons employed in the Gaol. Prior to the Appointment of Captain Steel, I gave him a copy of the enclosed Regulations, and told him they must be conformed to, as well as the state of the Gaol would allow; and I believed similar rules would be made by those, who had authority to make them, as soon as the Gaol was put in a proper state.

I have, &c.,

J. MACKANESS.

[Enclosure No. 8.]

MR. W. CARTER TO COLONIAL SECRETARY MACLEAY.

Dear Sir,

Sydney, 26th January, 1827.

Sheriff
responsible for
management
of gaol.

You requested I would give you my private opinion as to whether the Sheriff is not answerable for the conduct of the Officers of the Gaol, acting under him. I still entertain the opinion I gave when you mentioned the subject to me.

By 14 Edwd. 3. St. 1, C. 10, it is enacted "that every Sheriff, within every county within this realm of England, have the custody, rule, keeping, and charge of every the King's Common Gaols, Prisons, and Prisoners in the same." etc., and "that the Sheriff shall put in such Keepers, for whom they will answer," etc.

The Sheriff appears to me to have taken a wrong view of his Duty from his not attending to the distinction that, though

the modern Acts of Parliament carry into execution the provisions, they contain, almost entirely through the medium of the Magistrates, still they do not in any measure affect his responsibility; they point out Regulations as to the employment, classification, etc., of the Prisoners, which are to be carried into effect by the Magistrates of each county. The Sheriff is not answerable for these provisions being carried into effect; but the power of the Justices to act in the Gaol at all is derived solely from these Acts of Parliament, and, except in the particular duties so pointed out for the Magistrates, the Sheriff continues the only responsible person for the conduct of the Gaol and its Officers, who are appointed by him.

1827.
18 March.

Sheriff
responsible for
management
of gaol.

The 4 Geo. 4, ch. 64, is the act of Parliament, under which Gaols are now regulated; it contains various excellent and humane regulations, which are to be carried into effect by the Magistrates; but it does not deprive the Sheriff of the power of appointing the Officers of the Gaol, nor does it take away his responsibility. Unless he visits the Gaol, how can he know that his Officers perform their Duty?

Mr. Berry and myself have been appointed Visiting Magistrates for the present quarter. It will be our duty to carry the provisions of the 4 Geo. 4, as far as circumstances will admit, into execution; but our appointment cannot in any way supersede the Sheriff's responsibility. I have, &c.,

WILLIAM CARTER.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 13, per ship Guilford; acknowledged by Governor Darling, 2nd August, 1827.)

Sir,

Downing Street, 19th March, 1827.

19 March.

I have the honor to acknowledge the receipt of your despatch, No. 66 of the 10th Septr. last, accompanied by a return of all Civil and other Officers, attached to your Government, who are at present accommodated with Houses or Lodging at the publick expense; in reply to which, I beg to acquaint you that there only appears to me to be two Officers, enumerated in the List, whose situations do not render it necessary that publick residences should be provided for them, namely, the Master Attendant at Sydney, and the Superintendent of Works at Parramatta; and, although I do not mean to deprive the persons at present filling those Situations of an advantage, of which they may have been long in the enjoyment, yet I have to direct that, whenever a vacancy may occur in either of those situations, this indulgence should be discontinued. I have, &c.,

Residences
provided
for officials.

BATHURST.

1827.
19 March.

GOVERNOR DARLING TO EARL BATHURST.
(Despatch No. 45, per ship Magnet.)

My Lord, Government House, 19th March, 1827.

Land granted to
W. Stewart.

I have the honor to inform your Lordship that, as it became necessary for Colonel Stewart, the Lieutenant Governor, to make arrangements, previous to the departure of his Regiment, for settling the land, he has been allowed to receive, I have authorized his taking possession of 3,200 Acres instead of the 3,000 acres, ordered by your Lordship, as, from the situation of the 200 acres above the quantity specified by your Lordship, I was informed by the Surveyor General they would have been of little advantage to any other person.

Land to be
purchased.

Colonel Stewart had received authority from Sir Thomas Brisbane to purchase* 9,600 acres, which I have confirmed; and I have further authorized him to take possession of four additional Sections, or 2,560 acres, as a Reserve subject to your Lordship's approbation, Colonel Stewart being desirous of purchasing these Sections as being immediately connected with the land he has received. He will thus possess 3,200 acres* without purchase, and 12,160 acres by purchase.

Testimony in
favour of
W. Stewart.

I am inclined to think that Colonel Stewart has an intention of settling here, some of his relatives having already arrived and obtained Land, on which they are now settled. As he possesses ample means, his return to the Colony appears very desirable; and I am bound to say that the zeal, with which he has applied himself in the business of the Civil Government, as a Member of Council and a Member of the Land Board, which latter has been charged with the apportioning of Convicts to Settlers and Inhabitants, and which duties have kept him incessantly employed, give him strong claims to any indulgence, which the Government can shew him.

I have, &c.,

RA. DARLING.

EARL BATHURST TO GOVERNOR DARLING.
(Despatch No. 14, per ship Guilford; acknowledged by Governor Darling, 2nd August, 1827.)

20 March.
Despatches
acknowledged.

Sir, Downing Street, 20th March, 1827.

I have the honor to acknowledge the receipt of your despatches and Letters, dated and numbered as per Margin.† Such of these communications as require answers will hereafter be acknowledged separately.

I have, &c.,

BATHURST.

* Note 43.

† Marginal note.—27 July; No. 52 and 53, 30 July; No. 54, 31 July; No. 55, 1st Sept.; No. 56 and 57, 2nd Sept.; No. 58, 3d Sept.; No. 59, 4th Sept.; No. 60, 5th Sept.; Separate, 5th and 6th Sept.; No. 61, 6th Sept.; No. 62, 7th Sept.; Separate, 8th Sept.; No. 63, 8th Sept.; No. 64, 9th Sept.; Separate, 9th Sept.; No. 65 and 66, 10th Sept.; 11th Sept.; No. 67, 68, 69, 11th Sept.; No. 70, 12th Sept.; 13th Sept.; No. 71, 13th Sept.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 15, per ship Guilford; acknowledged by Governor Darling, 2nd August, 1827.)

1827.
20 March.

Sir,

Downing Street, 20th March, 1827.

I have the honour to acknowledge the receipt of your two dispatches of the dates mentioned in the Margin,* in which you transmit a Report of the proceedings, as they occurred, connected with the outrages committed by the Natives in the district of Hunter's River. The information, afforded to His Majesty's Government by the Report in question, is extremely satisfactory, so far as relates to the measures, which you have taken in consequence of these proceedings for the future protection of the Lives and Property of the Settlers, and with a view to prevent the recurrence of similar depredations; and I am also glad to observe that you have instituted further inquiries into the circumstances, under which these Natives were reported to have been put to death after having surrendered themselves Prisoners, which statement I trust, for the honour of all the parties concerned, will prove to be wholly unfounded.

Despatches
acknowledged.Inquiry re
murder of
natives.

I have, &c.,

BATHURST.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch marked "Separate," per ship Magnet.)

My Lord,

Government House, 20th March, 1827.

I have the honor to transmit for your Lordship's information the Monthly Returns for December, 1826, and January, 1827, of the Troops stationed in this Command.

Returns of
troops.

I have, &c.,

RA. DARLING.

[Enclosures.]

[Copies of these returns are not available.]

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Princess Charlotte.)

My dear Sir,

Downing Street, 23rd March, 1827.

23 March.

I transmit the accompanying Papers respecting the Convict Ellis; amongst which, you will find a letter addressed to myself from Sir Thomas Acland. Pray be so good as to look at them, and do any thing for the unfortunate man, which the circumstances of his case will allow, provided his good conduct should justify your interference in his favor.

Papers relating
to Ellis.

Believe me, &c.,

R. W. HAY.

* Marginal note.—No. 75, 6th Octr., 1825; Separate, do.

[Enclosures.]

1827.
23 March.
Papers relating
to Ellis.

[Copies of these papers will be found in a volume in series II.
They were:—

Sir Thomas Dyke Acland to Under Secretary Hay, 7th
March, 1827.

Mr. Thomas Pring to Sir Thomas Dyke Acland, 27th
February, 1827.

Under Secretary Hay to Sir Thomas Dyke Acland, 6th
March, 1827.]

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Magnet.)

My dear Sir, Government House, 23rd March, 1827.

1st. I have hesitated whether I should send you the enclosed number of the "*Monitor*," or treat its statements with the contempt they merit. I have, after some reflection, determined on the former, in order to expose the spirit in which it is written, and to show the efforts which are used to degrade the Government and rouse and irritate the convicts. It is impossible to furnish a better proof of this than the enclosed Paper affords. It commiserates the condition of the Emigrants, the State of the Prisoners, and urges the people to petition for redress of their grievances. These are stated under *Twenty four* different Heads. And I cannot but consider it complimentary to my Administration that, notwithstanding all the exertions which have been used, after arraigning every Act of the Government, and attacking the whole series of its measures in detail, he has not been able to prove a single instance of misconduct. This will be seen by reference to the enclosed Paper, which I have drawn up in reply to the several articles, many of which are so totally false, others so generally expressed, and some so ambiguously and equivocally worded, that I have been at some loss how to treat them. My own feelings would have dictated a contemptuous neglect of this base and unfounded attack, but, as the Article in question may possibly find its way into the English Papers, I felt it important that you should be prepared to meet it if necessary. The Paper is altogether of the most mischievous tendency. The cant, which is used in speaking of the treatment of the Prisoners, cannot be mistaken. But the cause of the Editor's malevolent feelings I am totally at a loss to account for. The leading Article on the case of *Roberts* (page 347*) is easily explained. This man arrived only three or four months since, and it is made a matter of grievance that he was not immediately assigned to his wife and restored to his liberty. The Chief

Criticism of
government
in *Monitor*
newspaper.

The case of
the convict
Roberts.

* Note 44.

Justice has stated in Council, as I have already mentioned in my Despatch of the 1st inst. to my Lord Bathurst, that the Government had no legal control over a Convict after he had been assigned; and the "Australian" has promulgated the same opinion. I should, therefore, consider it as defeating the ends of Justice to assign a man to his wife, until he had furnished proof of his reformation by a continued course of good conduct in the Colony for at least two or three years. A prisoner, transported for seven years, is obliged to furnish proof of uninterrupted good conduct for four years, before he is considered eligible to receive a Ticket of Leave. A man, assigned to his wife, may be considered in the same condition as one holding a Ticket of Leave, his wife only having legal control over him.

1827.
23 March.

Assignment
of a convict
to his wife.

3rd. The circumstance of the Native shot at Wallis's Plains, which is alluded to in page 347,* has occasioned infinite trouble without the possibility of coming satisfactorily at the facts.† The case is briefly this. A Native, who was supposed to have been concerned in the murder of a Stockman, was seized and delivered over to the Mounted Police at Wallis's Plains under Lieut. Lowe of the 40th Regt.

Shooting of
native by
mounted police.

It was rumoured that the man had been taken out and shot in cold blood. Orders were immediately sent to the Magistrates to investigate the matter. The report of their proceedings was unsatisfactory; and they were reprimanded by my directions for not having taken the necessary steps to ascertain the facts referred to them. Conceiving it would be unavailing to employ them further in this matter, the Chairman of the Quarter Sessions was directed to proceed to Wallis's Plains and pursue the enquiry. He was wrecked on the Coast, and obliged to return to Sydney. The Acting Attorney General was then sent to Wallis's Plains; but the indisposition of everyone to give information on the subject rendered his journey, after a detention of some time, totally abortive. The matter is still in his hands; and he is endeavouring to find one or two individuals, whose testimony he understands would be important; but I strongly suspect they will be kept out of the way, the inhabitants of every class being at least indifferent to the fate of the Natives, and unwilling that any one, that has been actuated by the same feelings, should be made answerable for his conduct.

I have only to add on this subject that Lieut. Lowe is detained in Sydney (his Regiment being at Van Diemen's Land), awaiting the result of the investigation, and that the subject has been repeatedly brought before the Executive Council, the Chief Justice being present, who in fact recommended the course which has been pursued. You will, I am satisfied, see from this that

* Note 44. † Note 45.

1827.
23 March.
Action taken
and proposed
by governor.

the Government cannot be to blame in this case. There has been no desire on the part of Government to screen the party, though circumstances, which could not be controlled, have prevented the enquiry from being prosecuted with the success which was desired. The matter being in the hands of the Civil Power, I have of course abstained from interfering with the Party as Military men; and I have in like manner been restrained from coming to a decision in the case of the Magistrates, until the question is finally disposed of, when it is my intention to bring it under the consideration of the Executive Council.

I have not made any previous report of the matter now alluded to, expecting from time to time that the investigation would be immediately brought to a close: but the incessant employment of the Attorney General has prevented his pursuing it, as he would have done, had he been less pressed by the business of the Courts.

Additional
criticism.

4th. In referring to the other Articles in the accompanying Paper, it will be seen that that, on the Execution of the Pirates,* is written in the same strain, as those on *Roberts* and *Kelly*, to excite a spirit of discontent against the Government. As to the case of Patrick Kelly (Page 348*), I have no immediate recollection of it; but I take for granted, it being one on which the Magistrates were fully competent to decide, that it was disposed of accordingly.

My letter has run to so great a length, I shall not permit myself to enlarge on the subjects of it; though I might caution you not to suppose these Papers speak the sentiments of the people. Neither Dr. Wardell nor Mr. Hall are known in Society, though the confidence, with which they assert, might induce a belief that they were the organ of the Public, the respectable part of whom very justly estimate their merit and their character.

I remain, &c.,

RA. DARLING.

[Enclosure No. 1.]

[*This was a copy of the issue of the "Monitor" newspaper, dated 16th March, 1827.*]

[Enclosure No. 2.]

EXTRACTS from the "Monitor" of the 16th of March, 1827, with Observations.†

1st. *Extract.* "The Land, and all the hardships and absurdities attending its location."

Land
administration.

2nd. *Extract.* "The new Rent Tax and Cedar Duty." *Observations.* There has been much difficulty, and consequently some delay in locating Lands; but the local Govt. is not to blame; the previous Survey of the Country, which was necessary according to the King's Instructions, had not taken place, and could not be

* Note 44.

† Note 46.

immediately effected from the want of Surveyors. The Instructions have in fact been dispensed with by the Local Government on its own responsibility, in order to permit the *Settlers arriving from England* being placed on their Lands. Some few of those chose to wait the throwing open the Reserves at Bathurst, in order to get the best land and have no right to complain.

It was not considered necessary to give persons, already Settled in the Country, the same indulgence, as they could not suffer in the same degree as new comers; and they have been required to pay a rent of *Twenty Shillings* for every *hundred* acres, until they can be put in possession according to the Regulations prescribed by the King's Instructions.

Observe, if these People had received the Land as an additional Grant, as they solicited, they would have been obliged to pay Quit Rent for it from the moment: they have, therefore, only suffered the inconvenience of not receiving the Land at once as their own.

The "Cedar Duty," as it is improperly termed to render the measure odious, was established as a measure of Police at the solicitation of the neighbouring Landholders. The greatest disorders had taken place amongst the Cedar Cutters; they went where they pleased, leading the lives of a banditti, and the only means of enforcing order was by sending a detachment of Troops to the place they frequented. They are now required to pay a *Half penny a foot* for the Cedar, they cut on the Crown Lands, and which is usually sold at 4s. a foot. There are no longer any complaints, and regularity is established.

The "Monitor" and "Australian," the advocates of popularity, alone complain of the Measure.

3rd. *Extract*. "The distribution of the Convicts." *Observations*. The *Character* and *object* of the above Papers cannot be better shewn than by the abuse of this measure. When I took charge of the Government 14 months ago, there was no Order or Rule for the disposal of the Convicts. They were given at the caprice of the Civil Engineer, to whomsoever and in such numbers as he pleased.

A Board has been since established, and Individuals now apply according to a certain Form, so that the wants of each may be seen; and they are supplied according to circumstances without partiality or favour.

Not one complaint of undue preference has ever been made to the Government. The Public Establishments have been reduced to the lowest scale; the Clearing Gangs have been called in, and the men distributed to the Settlers. *Two thousand convicts*, who arrived from England, were assigned at once from the Ships, making a total of Three thousand, three hundred and fifty assigned during the year.

4th. *Extract*. "The immense Taxation." *Observations*. The Inhabitants pay *no direct Tax*. There is a duty on the importation of Spirits and Tobacco, and an *ad valorem* Duty of Five per cent, on the importation of Foreign Goods. The present Government has imposed neither Tax nor Duty of any kind.

5th. *Extract*. "No accounts laid before the Public, of what becomes of the Money." *Observations*. The practice of publishing the accounts was discontinued long before the existence of the present Government.

6th. *Extract*. "The severe measures adopted to Ticket of Leave men, which by driving Prisoners to despair encourage Crime."

1827.
23 March.

Land
administration.

Timber
royalty.

Distribution
of assigned
servants.

Customs duties.

Non-publication
of accounts.

1827.
23 March.
Tickets of leave.

Observations. The present system affords many facilities, which the former did not possess. These facilities are intended as rewards; they are in fact measures of Police, and in this community cannot fail to be highly beneficial to the general peace and tranquility. A copy of these Regulations is annexed.

Prevalence
of crime.

7th. *Extract.* "The consequent increase of Crime since General Darling's arrival." *Observations.* The reverse is the fact, which can be as easily proved as the falsehood of every other assertion, made by the "Monitor."

The Registers have been examined, and the following comparative statement of the Prisoners, sentenced to suffer death in the year 1825 (the year immediately preceding my Administration) and 1826, will shew how far the assertion of the "Monitor" is borne out.

Prisoners sentenced to suffer death in the years 1825 and 1826: For Murder, 11, 8; Burglary, 15, 8; Rape, 2, 0; Felonies of various descriptions, 62, 30; Total, 90, 46. Executed, 11, 22.

The disproportion of the Number, which suffered in 1825, to the Number sentenced is explained as follows. It appears to have been a principle during the last Administration to execute no man, who had taken or attempted the life of another. Had this principle been acted on by me, *Eight* only instead of 22 would have been executed last year.

It will be seen that *only* one more than *half* the number of men sentenced to suffer death in 1825 received sentence in the year 1826. Let it be recollected at the same time that the population had received an increase of nearly 2,000 Convicts alone, without including Sailors and other persons of this description during the last year; that 500 of the most desperate characters had been released from Port Macquarie, having been sent thither under illegal sentences, who immediately re-commenced their depredations, several having been since executed; and that, of the 22 who suffered death last year, several of them were Bushrangers, who had been at large long previous to my arrival, and were taken in consequence of arrangements made by the present Government.

It will be easy to judge from the above *facts* of the "consequent increase of crime since Governor Darling arrived!" and of the truth of the rest of the statement in the "Monitor."

Granting of
pardons.

8th. *Extract.* "The withholding Pardons, both Conditional and Free, as productive in its measure of the like Effects." *Observations.* The Regulations lately established state that a Convict, having a "Ticket of Leave" for six years, will be considered as a recommendation to his receiving a Conditional Pardon; the good of Society requires that this Indulgence should not be granted indiscriminately; and, as it is a rule of the present Government not to grant favors to the undeserving, it may be presumed it will be the object of the Prisoners to merit indulgence.

Appointment
of military men
as magistrates.

9th. *Extract.* "The appointment of such numbers of Military men to the Commission of the Peace, by which a Military, in lieu of a Constitutional spirit, is being practised and engendered in the Colony." *Observations.* The Military are only employed as Magistrates at the Stations and Settlements, where there are no Gentlemen to undertake the duties. There are only two or three exceptions to this at the most; the Civil Engineer is one which is necessary in consequence of the number of Convicts immediately under his superintendence; and an Officer, attached to Mounted Police, is

also a Magistrate. The Article perhaps alluded to Capt'n. Wright recently appointed Police Magistrate at Newcastle, in anticipation of his retirement from the Service, having sent Home his resignation last year.

1827.
23 March.

10th. *Extract*. "Retaining in the Commission of the Peace the Justices, who sentenced men to Torture, and who thereby have become odious to the People." *Observations*. No man has been sentenced to Torture, and consequently the Magistrates cannot have rendered themselves odious on this account. Magistrates.

11th. *Extract*. "The continuance and enlargement of Excise laws, and their consequent encroachments on the rights of a young colony." *Observations*. The Excise Laws have not been enlarged, but continued exactly as I found them. The duties are insignificant, and cannot be burthensome. Excise laws.

12th. *Extract*. "The state of the Penal Settlements, particularly of Sodom Island."* *Observations*. The Editor affects to be a Philanthropist. But he finds the advantage of writing for the Convicts, as, with all their wretchedness, his Paper has a very considerable sale amongst them. The fact, adverted to in the Government Order of the 16th Instant, that several Prisoners, who had been lately relieved from one of the Settlements, had desired to be sent back rather than be assigned to the Settlers, is an unlucky proof of this inattention to veracity or facts. But his statements are at best equivocal, meaning no doubt to apply them as may suit his purpose. Penal settlements.

13th. *Extract*. "The state of the Circulating Medium, and the inconvenience arising from two kinds of money being allowed to circulate at the same time, viz. one amongst the people, and another among the Public Officers." *Observations*. The circulation of the British Coin is completely established. At present, there is not less than £30,000 Sterlg., dispersed throughout the Colony; and every pains has been taken to withdraw the Spanish Dollars, the amount of which now in circulation is very inconsiderable. The Local Government, however, would not be chargeable for it, even if inconveniences were felt. The conclusion of the paragraph is not true. Circulation of specie.

14th. *Extract*. "The evils arising from the want of Mails, and a proper regulated Post Office." *Observations*. An attempt has been made to establish a *Mail*, which could only be done at considerable expense, and an arrangement is making in consequence for a *Foot Post*. There is a Post Office at Sydney, where Letters arriving from England are collected and delivered. The Government forsooth is immediately to establish a Mail without reference to the expence, to which it is pretty evident the people would not be disposed to contribute, if the "Monitor" is to be considered as their organ. Post office and mails.

If we are to believe the "*Monitor*" and the "*Australian*," they grumble at their present burthens, though they pay no Tax. But there are no persons less informed on the state of the Colony than Mr. Hall and Dr. Wardell.

15th. *Extract*. "The State of the Police and the necessity of hiring a better description of men as Constables, and paying them better Salaries by applying the monies expended on a gaudy and, for the most part of the year, useless Mounted Police." *Observations*. Unlucky man! He is not aware, which is another proof of his Police administration.

1827.
23 March.
Police
administration.
- accuracy and information, that the salaries of the Constables, and others employed in the Police, have lately been raised, and the Establishment augmented. The dress of the Mounted Police, which is termed "gaudy," consists of a *Forage Cap, without ornament of any kind, a plain dark blue cloth shell jacket, and Overalls*, forming altogether the most sombre appearance imaginable without any trimmings whatever, it being an object to render them as little conspicuous as possible.
- It would be unnecessary to say another word in reply to his Paper, as the infamy of his attempt to excite feelings, injurious to the Local Government, is rendered obvious by this Article alone.
- Arrears in
survey
department.
- 16th. *Extract*. "The dreadful situation of Grants of Land owing to the state of the Surveyor's Office for want of assistance from England, the charting and measuring of the Colony being seven years in arrears, the farms granted by Governor Macquarie not being yet measured, and the consequent damage to Emigrants." *Observations*. If the general object of this Paper was not obvious, it would be difficult to comprehend what is meant by "the dreadful situation of Grants of Land." The Survey is certainly much in arrears; but this is not the fault of the present Government; nor does it materially affect the Settlers, who are as completely in possession of their Land, and reaping the fruits of it, as if it had been measured a thousand times over. Since the commencement of last year, 109 Individuals have received orders for land to the amount of 178,186 acres!!
- Clergy and
school estates.
- 17th. *Extract*. "The Church Corporation and its monopoly of the best lands in the Colony." *Observations*. *Totally unfounded!* The Church has not yet received a single acre of Land.
- A.A. company.
- 18th. *Extract*. "The Agricultural Company and its monopoly of the best Coal Mines." *Observations*. Ditto. The Australian Agricultural Company does not possess one atom of the Coal Mines, nor has the Government any intention of transferring any part of them to the Company.
- Disproportion
of sexes.
- 19th. *Extract*. "The dreadful evils, moral and political, arising from the present excess of Females over Males, and the increase of the Evil by the annual importation of six or more males for one female." *Observations*. I will suppose he means the excess of Males over the Females, though, considering his total disregard of Truth, it is as likely he means the one or the other. At any rate, how can this Local Government correct or control this? It is found impossible, even at present, to dispose of the women sent out; their characters are so depraved that they are returned almost as soon as they are assigned; and there are now 380 Women in the Factory, who cannot be disposed of.
- Control of
marriages.
- 20th. *Extract*. "The impediments given to Marriages in general, and to Catholic marriages in particular." *Observations*. Marriages have never been permitted to so great an extent, as during the present Administration. They have been sanctioned on principle, not inconsiderately, and, the experiment having failed, some necessary restrictions will be enforced to correct the evil.
- 21st. *Extract*. "The sundering of couples, when they are married, on frivolous regulations of no value or utility in themselves, and consequent temptation to the wives to commit adultery and bring up children to be thieves and prostitutes." *Observations*. *Totally false!*

22nd. *Extract.* "The State of the Public Houses as being, by the means of licensing and Excise Regulations, receptacles of thieves and Harlots." *Observations. False and Absurd.*

1827.
23 March.

23rd. *Extract.* "The dearness of the public beverage of the Colony, by means of its high price, induced by high duties, and consequent drunkenness of the People." *Observations.* No doubt the dearer an Article is the more people buy it.

Control of
spirit traffic.

24th. *Extract.* "The necessity of permitting the people of this infantile agricultural Kingdom to brew and distil their own beverage, as free from all Tax and restraint, as baking and cooking the remainder of their victuals and drinks." *Observations.* The Revenue, raised from the Breweries and Distilleries, is insignificant. But it will increase; and the legitimate objects of Taxation must not be relinquished altogether. Mr. Hall may extend the sale of his Paper by writing against Duties and Taxes, which is perhaps his first object; the next is to excite a spirit of discontent among the Convicts, and bring the Government into disrepute with the People.

RA. DARLING.

[Enclosure No. 3.]

[This was a copy of the general order, dated 1st January, 1827; see page 3.]

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Magnet.)

Sir,

Government House, 24th March, 1827.

24 March.

I have the honor to transmit to you, in reference to my letter of the 20th of December last, a copy of a letter, which I have received from Mr. Icely on the subject of his Application for land. Mr. Icely has been informed in reply that there will be no objection to his receiving a *Reserve*, paying rent for the same at the rate, prescribed by regulations, of twenty shillings per hundred acres, until the pleasure of Earl Bathurst shall be known. Mr. Icely possesses at present only 2,000 acres by Grant,* which he has been informed, as notified in my Letter above alluded to, will be increased to 2,560 acres, and that he will be allowed to purchase 9,600 acres, if he wishes it. It will be seen by the enclosed that he has not expressed any intention of purchasing, but has applied to be allowed a Reserve.

Application
for land by
T. Icely.

Mr. Icely possesses a considerable amount of Stock, and his Capital altogether is stated to amount to about £30,000. I therefore, request to be informed whether he is to be allowed an additional Grant, and to what extent, without purchase, or to be permitted only to purchase. In the former case, as he has already received a Grant, the payment of the Quit Rent will commence the first year. In the latter, the Value, when fixed by the Commissioners, will be paid by Instalments according to the public Instructions.

Capital
possessed by
T. Icely.

I have, &c.,

RA. DARLING.

* Note 43.

1827.
24 March.

[Enclosure.]

MR. THOMAS ICELY TO COLONIAL SECRETARY MACLEAY.

Sir,

Sydney, 15th February, 1827.

Application of
T. Icelly for
land grant.

Previously to my leaving England in July, 1825, I had the honor to address a Letter to the Right Honble. Lord Bathurst, Secretary of State for the Colonies, praying that he would be pleased to order me a Grant of Land in this Colony, equal to the Capital I was about to employ in mereantile and agricultural pursuits, which I stated exceeded Thirty Thousand Pounds (£30,000).

In consequence of which, I was led to understand by Mr. Wilmot Horton, the Under Secretary, that Lord Bathurst had issued Instructions to the Governor of New South Wales to comply with my request.

On the faith of this, I did not hesitate to make very considerable purchases of Horses, Sheep and Cattle in the Colony, in addition to a valuable Stock of Merino Ewes, and a thorough bred mare, which I brought with me from England.

On application to His Excellency the Governor after my arrival here, I was directed to submit a statement of my property to the Land Board; should the report of this Board have been laid before His Excellency, he will I trust be satisfied that the amount of Capital, *employed by me in agricultural purposes alone*, is (£34,273) Thirty four thousand two hundred and seventy three pounds.

It is with most serious apprehension for the result of my extensive outlay, and with severe disappointment, I have learned that His Excellency (having taken the opinion of the Executive Council) confines his extension of my original Grant of two thousand acres only to that of two thousand, five hundred and sixty acres, a portion of Land altogether inadequate to the maintenance of the extensive Flocks and Herds, of which I am now possessed by the outlay of my capital on the faith of the Secretary of State's Instructions, as communicated to me in Downing Street, by which I was led to expect that my Grant would be commensurate to the Capital, actually employed in Agricultural purposes, in proportion to that which ensures a Grant of (2,560) Two thousand, five hundred and sixty acres to any respectable Emigrant, upon the same principle (I presumed) as that on which the Agent of Mr. Thomas Potter Maequeen had received a Grant of Land for that Gentleman of (20,000) Twenty Thousand acres.

Upon consideration of these facts, I indulge a hope that His Excellency will be pleased to recommend my case to the Secretary of State, and that His Lordship will do me the justice to

order me a Grant of Land, equal to the Capital that I have embarked in the Colony; and, in the mean time, I earnestly pray that His Excellency will be pleased to grant me a Reserve of Land of sufficient extent for the maintenance of my Stock, until the pleasure of the Secretary of State shall be known.

I have, &c.,

THOMAS ICELY.

1827.
24 March.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch marked "Most Private and Confidential"; acknowledged by the right hon. Wm. Huskisson, 21st September, 1827.)

My dear Sir, New South Wales, 24th March, 1827.

1st. I have just received, at the moment of closing my Despatches, a Private Letter from Lieut't Governor Arthur, in answer to one which I had written to him respecting the disposal of Convicts, and in which he quotes a passage from Lord Bathurst's Despatch to him of the 23rd of April last, which runs as follows, vizt. "It seems to be imagined (though very erroneously) that the Governor has the power of sending to such Penal Settlements, as may be formed in the Colony, those Convicts only, who may have been guilty of Crimes since their arrival in the Island. Whereas it is open to him to distribute in the way, he thinks best, those Convicts, who may be assigned to his care, and to provide for their security and good conduct in the manner, which he considers to be most fitting for the interests of the Colony; and, for this purpose, I shall not fail to draw your attention to those whose Crimes are of such a magnitude as to require that they should be at once consigned to one of the Penal Settlements."

Instructions by
Bathurst re
disposal of
convicts by
governor.

This is a point of so much importance, and is so completely at variance with the opinion of Mr. Forbes, that I must request your particular attention to it. I beg in consequence to refer you to my Despatch to Lord Bathurst of the 1st inst., marked "Separate," in which you will perceive it is stated, as the opinion of the Chief Justice, "that the Governor . . . cannot of his own authority remove a Convict to a Penal Settlement, or order his being worked in Irons"; and I must also refer you to that Letter for the opinion, which Mr. Forbes has expressed on other points, by which it would appear that the Government has no Control over the Convicts; that they are sent here for the purpose of assignment; and that the Governor is bound to assign them; and further that the Assignee may reassign them, as he pleases, the Governor having in fact no power to interfere, either by granting them Tickets of Leave or otherwise, excepting in the case of Pardons. I cannot, however,

Opinion of
chief justice
re control
of governor
over convicts.

1827.
24 March.

Illegality of
instructions
alleged by
chief justice.

think that the view taken of the matter at Your Office accords with the opinion the Chief Justice has expressed, and I am, therefore, anxious it should receive the earliest consideration

I should observe here that Mr. Forbes has on more occasions than one intimated that the Instructions, conveyed in the Despatches, were at variance with the Acts of Parliament, and that they did not possess that Authority, which would justify their being carried into effect. I might instance the Despatch of July, 1825, No. 5, respecting the Press. He observed that it went further than the Law would warrant; and I was satisfied from the first, though I have said but little on the subject, that he would not certify any Bill drawn up in Conformity to those Instructions.

Opinion of
S. Bannister
re control
of convicts.

It occurs to me that, having Consulted Mr. Bannister more than once with respect to the power of the Governor to send Convicts to the Penal Settlements and to work them in Chains (instancing that their Sentence was Transportation to *New South Wales* generally, and not to Sydney or any particular part or settlement of the Colony), He invariably stated that the Governor could not send a Convict to a Penal Settlement as a *means of punishment*, or order a Convict to be put in Irons, *except for the purpose of preventing his making his escape*. In alluding, last Sunday, to this opinion of Mr. Bannister's, in which Mr. Forbes had formerly appeared to concur, he said he now thought differently, and observed, I think in allusion to some recent Act, that the Governor could not order a Convict to a Penal Settlement, or to be worked in Chains. In short, the situation of the Convicts appears now to be placed in a different light to what it has hitherto been view'd; and, egged on as they are by the "Monitor" and "Australian," the consequences cannot fail to prove serious in the extreme, if the Government is not vested with sufficient power to control them. In stating this, I should mention that the Magistrates have expressed some alarm at an article* in the "Monitor" of the 9th inst., which I enclose; and by which you will perceive, on reference to the last page, that Judge Stephen is reported to have delivered himself to the following effect from the Bench; vizt. "that he wished it to be understood that the sentiment, uttered by the Acting Attorney General, namely that the Magistrates, knowing the Applicants to be Prisoners of the Crown, considered their being put into the Watch House as an Act which, as Prisoners of the Crown, the said Justices could take a greater liberty of doing than if they had been Free Men, was erroneous."

Adverse opinion
of F. Forbes.

Opinion
given by
J. Stephen
in court re
rights of
convicts.

"The learned Judge then, with infinite satisfaction to the Auditors, and honour to himself, deprecated such a principle,

* Note 49.

and begged it to be understood that the rights of Prisoners were as sacred in the Eye of the Law as those of Free Men; and, while he had the honor of sitting where he did, he would never allow them to be impugned or treated carelessly."

1827.
24 March.

Opinion
given by
J. Stephen
in court *re*
rights of
convicts.

I am now in correspondence with Judge Stephen on this matter, and shall probably be under the necessity of referring it to you officially, as in fact he has desired. Conceiving I have improperly interfered in the discharge of his duties, though I simply enquired from him if the Statement was correct.

2nd. I regret it is not in my power to forward a formal report of the occupation of King George's Sound. The Settlement was established on the 30th of December last; but I have not received such a Report from the Commandant, as I could transmit officially. I expect Major Lockyer here in a short time, when I hope to be enabled to give you every necessary information respecting that Settlement.

Settlement at
King George's
sound.

3rd. I am under the necessity of deferring the Communication, I promised, respecting the arrangements for the Civil Service. The incessant worry of this Government, the wrong-headedness of Individuals whose duty it is to support it, and the indisposition to do what is right, leave me without a moment to attend to those matters, which are of real importance. I have only to hope for more reasonable People, or sufficient patience to bear with those I have to deal with.

Difficulties of
government.

I remain, &c.,

RA. DARLING.

[Enclosure.]

[*The issue of the "Monitor" newspaper,* dated 9th March, 1827, was inclosed.*]

GOVERNOR DARLING TO SECRETARY OF STATE.

(Despatch per ship Magnet.)

Sir,

25th March, 1827.

25 March.

Conformably with my Instructions to this effect, I have the honor to submit for Your information the Sydney Gazettes from the 14th of February to the 24th of the present Month.

Transmission
of copies of
Sydney Gazette.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HORTON.

(Despatch marked "Private and Confidential," per ship Magnet.)

My dear Sir,

New South Wales, 26th March, 1827.

26 March.

1st. You will see by the Letters, Public and Private, which I forward by this opportunity, that the Plot is thickening pretty fast here. The Papers are so totally regardless of all decorum,

* Note 49.

1827.
26 March.
Criticism in
newspapers.

that, were it not for the impression their statements may make at Home, I should treat them with the contempt they merit. The "Monitor" of the 16th inst., however, has made such a *general* attack on the measures of the Government, that I have thought it as well to answer its 24 charges in detail, so as to show at once that these Papers pay no attention whatever to truth; and I beg to refer you to Mr. Hay, to whom I have forwarded my "observations."

Influence of
W. Sorrell.

2nd. I am inclined to think that Colonel Sorrell* is more *busy* than becomes him on the subject of these Colonies. The Convenient plianey of his disposition made him a favourite at Van Diemen's Land, and his examinations before the Committee give him a degree of importance here that is likely to prove troublesome. It seems that he has obtained information *somewhere* that Colonel Arthur's recall had been determined; and, but for the arrival at the moment of General Darling's Despatches (which he no doubt deplored as a great misfortune to the Colony), a successor would have been immediately sent out. I send you the "Australian" of the 17th† inst., in which this is adverted to, and which has led to a variety of impertinent remarks.

Opposition to
G. Arthur.

From whatever Cause proceeding, I rejoice most heartily that Colonel Arthur has not been removed. No man of character could hope to maintain his ground, if such Papers, as we have here, are to be permitted "to write him down." The Editor of the "Colonial Times," the celebrated "Laythrop Murray,"‡ who assailed Colonel Arthur for two Years and endeavoured to blacken his character in every possible way, himself I believe a Convict at the time, is now in Jail for accumulated guilt—a double Forgery! His Coadjutor in the Colony, Doctor Wardell, had publicly declared his determination in the "Australian" to write Colonel Arthur out of the Government, and the disappointment, occasioned by Colonel Sorrell's Letter, has whetted his spleen against me.

Intended
resignation of
T. H. Scott.

3rd. The Archdeacon informed me Yesterday of his determination to resign, which I regret on one account. The Papers will take the credit of his retirement and render this place intolerable. As far as regards himself, his own Comfort and respectability, he is quite right. He never could recover his first mistake, Connecting himself so intimately with the Macarthurs. He does not possess sufficient character for his place. But there cannot be a more amiable or better disposed Man. He gave in a Letter Yesterday, wishing I should forward it to Lord Bathurst; but I pointed out the impossibility of my doing so without previously referring it to Mr. Forbes, as he Complains in strong terms of his Conduct; and, as I frankly told him, in

* Note 50. † Note 51. ‡ Note 52.

the present unpleasant state of matters here, I should rather not be obliged to do so, he withdrew his Letter. You must see that calling on the Chief Justice to defend or explain his Conduct would probably have occasioned an open rupture; and I have quite enough on my hands at present to induce me not to enter the Lists with any fresh Antagonist, if it can be avoided.

1827.
26 March.

4th. The Archdeacon has, however, charged Judge Stephen with improper Conduct in a recent trial,* in which he presided; and, finding it impossible to put the matter at rest, it is my intention to enquire into it, the moment my Letters are despatched. I wish indeed most heartily, on account of my friend, Your Counsellor, that his Uncle had remained in the Court of Requests.

Charges made
by T. H. Scott
against
J. Stephen.

5th. I enclose you the last "Monitor," the Australian Cobbett. Every Article shews the mischievousness of the fellow's Character. The Magistrates are treated in such a manner by the Papers in general, and some are so much alarmed by an opinion of Judge Stephens', which I have mentioned *Privately* to Mr. Hay (the matter not being yet disposed of), that I understand some of them have declared they will not act or subject themselves any longer to abuse and prosecution in return for their gratuitous Services. The result must be that Police Magistrates must be appointed in the different Districts at an Expense of not less than £400 a Year each. I mentioned to you, in my Letter of the 6th of February last, that the "Australian" in particular was exerting itself to cast ridicule on the Boards and Committees, which had been appointed to assist in the regulation of different matters.

Effect of
decision
given by
J. Stephen.

I was satisfied the object was to detach certain Persons from the Government, who had evinced a readiness to afford their Assistance, and the result has proved as I had anticipated. Mr. Woolstoncraft, the Chairman of the Chamber of Commerce, has withdrawn from a Board appointed to enquire into the Naval Officer's Department, of which he was a Member.

Effect of
newspaper
criticism.

6th. As you wrote me some time since respecting Mr. Mackaness, I must beg leave to refer to my Despatch, No. 44, by this opportunity. I have no hesitation in saying he is not well affected to the Government; and, from his Connexion with the Wentworths and Wardells, he is in some degree dangerous, as I have before hinted. He is generally the leading Character at all the Popular Meetings. I instanced, in a former Letter, that he was the only stranger invited to the "Anniversary Dinner," given by the Emancipists. He is just the sort of Man to give a tone to such Associations.

Conduct of
J. Mackaness.

* Note 53.

1827.
26 March.

Conduct
required of
officials.

This Colony is only to be preserved to the Government by sending out "good Men and true." The most *decided* efforts of every Member of it are necessary. People may think it very laudable to evince what is termed *liberal* feelings; but the line between their feelings and *radicalism* is not very easily defined.

They are led imperceptibly into the latter, when they perhaps think they are indulging only in the former. I never supposed my duties here would be light or easy; but I could not Conceive they would have proved so arduous. At the same time, I must warn you not to be led away by supposing the Papers speak the Sentiments of the People.

Objects of
the press.

They are intended to gratify the Convict Population; and so far they succeed, and are doing much mischief; but both Dr. Wardell and Mr. Hall are justly condemned by the respectable Classes of Society.

Proposed
restraint
of press.

7th. While on the subject of the Press, I should mention that it is my intention to ascertain from the Chief Justice, as soon as my Letters are despatched, to what extent he is disposed to Certify an Act for restraining it, as it is hardly becoming that a Government should sit down tamely under the abuse, which is lavished so profusely upon this.

Influence of
the press.

The effect, in a small, confined society like this, is totally different from that which is produced by News Papers at Home. There, people are not so immediately interested; but here the Convict, whose treatment is generally the subject of animadversion, is taught to believe he is ill treated and oppressed. I might add there is no Comparison between these (I include Van Diemen's Land) and any other Colonies. The People at the Cape and elsewhere may grumble and express discontent, but they will go no further. They will not proceed to such lengths as would be injurious to their private interests. The Majority of their population is not Composed, as this is, of Convicts of the most desperate Characters, who are desirous of any change. These Colonies are peculiar in this respect, and their situation is Consequently more Critical than others.

The attempt to restrain the Press at the Cape has, I perceive, occasioned some commotion. A similar Attempt here would probably produce the same effect; and Petitions to Parliament would, I have no doubt, be got up. The question, therefore, resolves itself into this, whether it is better for the Government to put up with the abuse of the Press and take the Chance of the Consequences, to which it may lead, or to check it, in which case the hands of Government will probably require to be

strengthened, so as to prevent the effect of any ill feeling, which may be occasioned by the Papers amongst the Convict Population.

1827.
26 March.

Speaking of an Act on this or any other subject reminds me of the difficulties and embarrassment, to which I am subjected from the want of Competent legal Assistance. We are in fact Completely at a stand; a dozen Bills at least require being passed, but it is impossible with our present means to get them prepared.

Want of legal assistance.

Mr. Moore's hands, the Actg. Attorney General, are quite full. The business of the Courts gives him ample employment. Mr. Carter, the only person we can look to, has very readily afforded his assistance and proved himself extremely useful on many occasions.

Employment of W. H. Moore and W. Carter.

But his Health has for some time past been very indifferent. As to applying to Mr. Holland, it is out of the question. I should not have acquiesced in the Chief Justice declining to admit him as Solicitor General, had there been a prospect of his talents rendering him useful to the Government. The reverse was too evident; and his Conduct in the Court of Requests has subjected him to the derision and ridicule of the Public.

Incompetence of J. Holland.

4th. I have now, my dear Sir, only to advert to the Papers,* you sent me, respecting "Educated Convicts." I have not been able to do more than peruse them. The Plan would of course be to send these People to some detached Settlement in the interior, or on the Coast, which is not immediately Penal; as my "Separate" Despatch of the 1st inst. will shew you, it is understood here that the Governor has not the power of sending a Convict to a Penal Settlement. I am not aware of there being any one here at present of the description of an "educated Convict," excepting *Conolly*, the Surgeon, and he has no pretensions to any respectability of Character. He is a drunken, worthless fellow. There are one or two others, who are well Connected, but so debased in mind as not to feel the degradation of their situation.

Treatment of "educated convicts."

There is a Brother† of Sir Edward Knatchbull's, who, I understand, was a Post Captain of the Navy, and is now employed as a Constable carrying Letters, and who seems perfectly satisfied with his present Condition. Another, whose name I do not immediately recollect, is employed in a menial situation about the Barracks, and appears equally contented. I, therefore, do not anticipate any unpleasant Consequences from those, who are now here. In future, I should send all such Persons to the Interior, immediately on their coming out; but I shall not fail to consider Your Plan, the first moment I can spare, and give you my opinion how it can be best carried into effect. I have

1827.
26 March.

inadvertently travelled beyond the boundary, to which I ought to have confined myself in writing to you; but the subjects are so blended with one another that it is not easy to avoid the error, I have fallen into, and I must hope you will excuse it.

I remain, &c.,

RA. DARLING.

[Enclosures.]

[*These were copies of the issues* of the "Australian," dated 17th March, 1827, and of the "Monitor," dated 23rd March, 1827.*]

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Magnet.)

My dear Sir,

New South Wales, 26 March, 1827.

Transmission
of letter by
J. Holland.

I forward the accompanying copy of a letter and enclosure at the desire of Mr. Holland, from whom I have received them, the originals of which, I understand, he transmitted by the last opportunity to the Earl Bathurst. I have endeavoured to explain to Mr. Holland, that I have not placed him in the situation of Solicitor General, as I have not received any notification of his appointment. I can only repeat that he was announced in the *Gazette* on his assurance, that he had received from you a copy of the Dispatch, directing his appointment to that Office. Had he afterwards appeared competent to the situation, I should have confirmed him in it; but, when my eyes were opened to his total unfitness, I felt I was not only not bound to appoint him in the absence of orders to do so, but that, even had I received orders (which I must have supposed had been given inadvertently), I should have exposed myself to just and merited reprehension. If this opinion required confirmation, it would be sufficient to refer you to his own letters, to the Papers I now enclose. I might add I can have no desire to injure Mr. Holland; and, so far from having shown any, I have acted the part of a friend in not placing him in a situation, in which his professional reputation must have been destroyed for ever. His success as Solicitor General would have depended on his talents; but, with all his defects, he has been insured £800 a year by his appointment as Commissioner of the Court of Requests. As to employing him as Attorney General, though he had been Solicitor General, I should not have ventured, with the opinion I entertain of him, to have assumed such responsibility.

Incapacity of
J. Holland
for office.

I remain, &c.,

RA. DARLING.

P.S.—I beg also to enclose other documents from Mr. Holland, which he has desired may be forwarded to Earl Bathurst, and are marked, "Important, No. 2. J. Holland."

* Note 51.

[Enclosure No. 1.]

Copy of my letter dated 10 February, 1827, to R. W. Hay, Esqre.,
Under Secretary, etc.

1827.
26 March.

Sir,

Sydney, 10 Feb., 1827.

The Ship *Marquis of Huntly* has left this Bay, and I have waited, under an arrangement with the Colonial Secretary, before I felt the necessity of communicating to you a fact, which involves my personal happiness and interest, and one, in which I am confident you will do me the honor of commiseration. It will be in your recollection that, under many pecuniary and other difficulties, I gave up the Law Offices and the Auditor General, and, on the 1st May last, Mr. Musson was appointed in my stead Attorney General there. I was to succeed Mr. Stephen in his Offices here. The Chief Justice tells me he never acted in the Supreme Court as Solicitor General; a fact to which I beg to call your notice, and also I have to solicit information as to the Offices Mr. Stephen actually held, or was appointed to before his promotion, and which I took in exchange for Bermuda. Without troubling you in detail, I applied for my warrant the same as I had had in Bermuda from His Majesty; but, instead of this, I was shown a letter from Earl Bathurst to the Governor, stating my appointments, and that I was to have my half pay from my embarkation, and full pay on my landing in New South Wales. This is otherwise settled, I believe, by Mr. Baillie, Mr. Wilson and Mr. Horton; it is to begin 1st May as Commissioner of the Court of Requests; to which I would just observe Newcastle has been added, since I have been here, and with which place you are no doubt geographically acquainted. No difference has, however, as yet been made in the salary, and the travelling expences are not allowed, although Mr. Carter, the Master, who was appointed Chairman of the Court of Quarter Sessions on the promotion of Mr. Stephen with the salary of £300 per annum, has also £100 for travelling.

Transfer of
J. Holland
from Bermuda
to N.S.W.

Employment as
commissioner of
court of request.

With the greatest deference and respect, I would ask Mr. Stephen and Mr. Horton whether this appointment was not one, which they spoke of as coming in succession to me, but which in event has not. The Estimate for Bermuda was £500 per annum. I received it from January to 1st May, 1826, and Mr. Musson afterwards. I remained in Town with my family until the 8th August, without receiving pay as yet from either place; in fact from Bermuda I got nothing; in consequence of which you were kind enough, at the suggestion of Mr. Horton, as my Bermuda claim was unpaid, to direct Mr. Barnard to advance £200, which, with a great part of the other £300, was exhausted for my fit out for myself and family in coming to New South Wales, not

Salary and
advances
received.

1827.
26 March.

Financial
position.

Despatch left
in England.

Interview with
governor on
arrival.

Refusal of
F. Forbes to
administer
oaths.

having a farthing in the world beside from any source, a fact which Mr. Huskisson and Mr. Wilson severally impressed the Department with. Words cannot tell how much my situation is worse in the comparison even with that period. There was plenty of money due to me, payable at some time, and the Estimate, without the debt contracted for coming here, would have supported me better, as I was, than any thing I can expect in this extravagant place with my prospects so altered from what I was led to believe. The authority, on which I came out here, The Letter* said to have been sent, before I saw it in the Book, has never reached New South Wales. The Chief Justice, even if it had arrived here, has, as you will see in his letter, manifested objections to swearing me into the Supreme Court. The sealed copy I had in my hurry (of which you had ample information) left with Mrs. Green in her care at Wills's Coffee House; out of all my correspondence with the Department, this is the only letter of which I have not the original or a copy; and I very well remember when the letter was brought down sealed, I said I wished to show it my wife and friends to satisfy them of my appointments. This request was answered by "that it was not usual to send unsealed Letters to Governors," yet my Introduction to Sir Wm. Lumley was so, beside my warrants. I wrote in the River by the Pilot, to everybody I could trouble, to have the goodness to send it to Curlings at Deal, the Agent of the Ship Speke; but away we went past every Port, and on the 25 Nov. arrived here.

The Governor sent to me, and I, expecting of course that he had his Letter from the Department shewn me there, although I had left mine behind, I began by regretting my loss, as it prevented me from having the personal honor of delivering the usual letter from Earl Bathurst; but, as I had been given to understand that the Colonial Department had announced me long before, I felt confident of His Excellencie's recognition of the Solicitor General and Mr. Commissioner at least; "What, Sir, have you no Commission? No, Sir. No letter? No, Sir. Neither have I, Sir, except a private one"; and His Excellency did not tell me where that came from, but I guessed Mr. Barnard, for he knew of the advance of the £300; the conversation became desultory, and subsequently the Official correspondence, which I dare say he has transmitted to the Department, ensued. Convict ships have come in, but no account for me; after the Governor had done me the honor of gazetting me here on the 12 Dec., 1826, in both offices, some how or other the Chief Justice made exceptions to swearing me in (his letter will show them); the plan was altered, and then the Colonial Secretary

* Note 56.

wrote me word that the Colonial Seal could not pass. The result is I am not appointed Solicitor General up to this 10 day of February, 1827, owing to causes which I have fully explained. In the mean time, a Mr. Moore holds the Office of King's Coroner with a Salary of £300 a year, Crown Solicitor or some such name, I forget the technical title, with £300 per annum more attached to it, and Acting Attorney General all under the Colonial Seal as the Chief Justice himself told me; whilst, from the scruples I have mentioned, I am without the power of even sitting in the Supreme Court, or earning a professional fee. In the margin of my Letter, dated the 19th January, 1827, No 36 from the Colonial Secretary, and the numbers following each other, which I have thought it prudent to copy, as I do not think the Governor has written yesterday about it; and Mr. McLeay advised me, if I did not hear from him, to write myself to you.

1827.
26 March.

Offices held by
W. H. Moore.

Having thus stated the matter of fact to you, I shall not venture to trouble you with any reflections on my unfortunate and appalling situation. The actual position, in which I have been placed, Sir, in such a community, must be obvious.

Position of
J. Holland.

I have sent my friend, Mr. Thomas Wilson of Hackney, the Particulars and my letters, requesting him (who has so faithfully stood by me and overshadowed me with his respectable patronage before) to do me the essential favor to see you on this lamentable affair, in which my character, my peace of mind, my personal prosperity, and my poor wife and family are accidentally involved by fortuitous events, over which no prescience had control.

I have, &c.,

JAMES HOLLAND.

[Enclosure No. 2.]

MR. J. HOLLAND TO EARL BATHURST.

My Lord,

[undated.]

It is with deep regret that I have the honor to acquaint your Lordship with circumstances connected with my appointment to the Office of Solicitor General of New South Wales (which your Lordship nominated me to in the month of March, 1826), that have unhappily transpired since the 26th of November, the day of my arrival in this Colony, in pursuance of your Lordship's authority and direction.

Report
submitted.

It has so happened that the letter,* which your Lordship addressed to General Darling, informing him of His Majesty's pleasure, directing my appointment in the Colony, and to the Office of Commissioner of the Courts of Request, has not reached its destination; and, in consequence thereof (an event which I

Non-arrival
of despatch.

* Note 56.

1827.
26 March.

Refusal
to confirm
appointment
as solicitor-
general.

Oaths
administered as
commissioner,
but refused as
solicitor-
general.

could have no control and remains to be explained). The Governor and the Chief Justice have absolutely refused to award me the colonial qualifications, alledging certain reasons contained in a letter to me from the Chief Justice, of which I transmit a copy of the date of the 27 January, 1827. His Excellency the Governor having already on the 12th December, Officially in his capacity, announced in the Government Public Notice, according to Law and Custom, in the Sydney Gazette, my appointment as Commissioner of the Courts of Request, and also in a separate one following, that His Majesty had been pleased to appoint me Solicitor General for New South Wales, a fact, my Lord, which His Excellency, antecedent to this Public Advertisement and admission, raised doubts upon and deliberated, and the result was then satisfactory to my claims, I was appointed. The five Commissions to the Courts of Request passed the Seal, and the Chief Justice swore me in. When I applied for the Oath as Solicitor General, he refused it; and I earnestly request to impress upon your Lordship's particular notice the date of his letter to me, containing his legal objections, which were made after my right had been admitted. One of his reasons for not swearing me into the Solicitor Generalship was that I had not produced the Patent, appointing me to that High Office. My reply was that that was true, but that the Colonial Department had not furnished me with any; therefore I could not produce one. Another reason was that, in the ordinary course of Colonial Appointments, A Warrant under the Sign Manual was transmitted by the Secretary of State to the Governor, who, thereupon, causes Letters to be made Patent. I assured him that the Department nor your Lordship had never contemplated this. I was certainly appointed so as Attorney General of Bermuda, and applied for it as usual on my exchange to New South Wales; but, instead of it, the Under Secretary of State shewed me your Lordship's Letter* to the Governor in the Letter-Book; and, at the time, he shewed it me I was told the original was forwarded, and would be there before me. I begged him, for the satisfaction of my friends that they might know the reality of my appointments, not having a Warrant under the Sign Manual, to give me a copy; and, after much hesitation, a sealed duplicate of your Lordship's letter was given me. I expressed some disappointment at its being sealed, as my object was obviously thwarted. The recollection of the letter, which I read in the Colonial Office, was the only source of information I had, for I considered the correspondence between your Lordship and the Governor to have been perfectly independent of me; so indeed it was for the copy, I asked for and had, was for a purely personal

* Note 56.

motive. That I gave to Mrs. Green of Wills's Coffee House to keep for me, till I should go out; but I left it behind, which accident has brought the penalty of exclusion from the situation, to which your Lordship had so kindly nominated me at the request of Mr. Horton.

1827.
26 March.

With reference to the public acts, which happened antecedent to this alteration in the measures of His Excellency towards me, and the grave consequences induced on my personal character, interest and fortunes by the employ and continuance of Mr. Moore, as Acting Attorney General, to my exclusion (the Attorney General not having yet arrived), I beg respectfully to acquaint your Lordship that I had entered into a full explanation with the Governor, the Colonial Secretary and Chief Justice, before this decision, so fatal to my respectability and happiness, took place; and that I had no reason to expect such an Issue must be evident to your Lordship, when reference is had to the humane motive, which had a place in my recommendation here, and the legal reasons which have been set up to shew an inability to hold that which your Lordship accorded to me; After the Governor had gazetted me and the plain explanation, the consistent account I had given him which, if it had not been true, would, in the course of a few short months, have exposed me to contempt without unnecessary contumely, which has come on me by his having adopted an irretrievable measure, in opposition to his own act as Governor in Gazetting me on the 12th December against the ample evidence of my correspondence with the Colonial Department to prove my identity by connecting circumstances by pecuniary transactions as Solicitor General of New South Wales.

Appointment of
W. H. Moore.

I assure your Lordship that I have bowed patiently under this tremendous visitation of Providence, as it became me in the conscious assurance that I have made a respectfully use of the arguments and facts, which sustained my unquestionable Right to the Office of His Majesty's Solicitor General, notwithstanding the impediments which have been offered.

There are certain circumstances connected with the appointment of Mr. Moore as Attorney General, which, with a copy of his Commission dated some days before Mr. Bannister, the late Attorney General, left the Colony in the ship *England* for China, which sailed on the 22nd of October, I humbly crave leave to lay before your Lordship. The *Speke*, in which ship I came out, arrived on the 26th of November; I acquainted the Chief Justice and Mr. Justice Stephen, with whom I breakfasted the next morning, of my having left the sealed copy of your Lordship's letter to the Governor behind; and I also told the Governor,

Reception of
J. Holland
on arrival.

1827.
26 March.

Public
recognition
on arrival.

who had sent an Orderly on board for me. I was afterwards introduced to Mr. Moore, as the Crown Solicitor; and he asked me to conduct a particular case of murder, where the evidence was difficult; but I declined, assigning as my reason that he knew the circumstances of the case better than I could do, a stranger; and that is the only conversation I have ever had with Mr. Moore. The next public convers, on which I was officially recognized a few days after my arrival, was at a meeting of the Corporation of the Trustees of the School and Clergy Lands. I declined attending on the ground that I was perfectly unacquainted with their affairs. The Chief Justice then argued that, as Solicitor General, *ex officio* I was bound to comply. Then on the 12th of December following, I was appointed in the *Gazette* to both Offices, as before stated; and I understood from the Chief Justice that the Office of Coroner, which Mr. Moore filled, was as ample as that of Attorney General, and that it was coeval with it, and exercised by him during Mr. Bannister's time. I asked him what was the object of the Governor in appointing him, as I understood he had done now.

Appointments
announced in
Gazette.

Refusal to
confirm
appointment.

The Colonial Secretary, after the Governor had gazetted me as Solicitor General, informed me that, as I could not produce the copy of your Lordship's letter, they declined qualifying me; and the Governor himself told me individually he could not institute me to that Office, whereas he did, on the 13th of October, appoint William Henry Moore, his Majesty's Attorney of the Supreme Court, Attorney General of the Supreme Court, Attorney General of the Colony of New South Wales, as, by the Copy of the Commission, sent herewith, will appear. Waiting your Lordship's confirmation of my appointment, which is the only one thing necessary, and that reasonable retribution, which your Lordship must feel is manifestly due to an humble but faithful servant of the Crown.

I have, &c.,

JAMES HOLLAND.

[Enclosure No. 3.]

COPY OF MR. MOORE'S COMMISSION.

Commission of
W. H. Moore.

GEORGE the Fourth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith.

To all, to whom these present shall come,

Greeting.

Know ye that We, being well assured of the loyalty, learning, ability and integrity of William Henry Moore, Esquire, have, therefore, thought fit to constitute and appoint him, the said William Henry Moore, Our Attorney General of Our Colony of New South Wales, To have and hold the said Office of Attorney

General in our said Colony unto the said William Henry Moore, from henceforth, during Our Will and pleasure and his residence within the said Colony of New South Wales, together with all and singular, the powers, authorities, privileges, rights and profits, advantages and appurtenances, to the said Office of Attorney General in our said Colony, belonging and appertaining, as fully and effectually as Our Attorney General in England doth, and of right ought to hold, exercise and enjoy in England.

In testimony whereof, we have caused these our letters to be made patent, and the Great Seal of Our Colony of New South Wales to be hereunto affixed. Witness Our trusty and well beloved Ralph Darling, Our Captain General and Governor in Chief of Our said Colony of New South Wales, Sydney, this thirteenth day of October, Anno Domini, One thousand eight hundred and twenty six.

By His Excellency's Command,

ALEX. MCLEAY.

[Enclosure No. 4.]

COPY OF MY LETTER TO THE COLONIAL SECRETARY, No. 71.

Sir,

[*Not dated.*]

Your letter has involved me in a last and vital alternative. I send you 1,000 pages of bound up original correspondence with the Colonial Department, and I have selected sentences enough from both the Under Secretaries of State to qualify my pretensions to the Office of Solicitor General, if their purity and approbation be the one thing needful to save me from the precipice, a casualty has again prepared for me with a remarkable precision in my public life. There was a sudden irretrievable cause (Mr. Robinson's Navigation Bill), perfectly unconnected with any physical or moral agency, or even individuality, that blighted me in a pecuniary point of view in Bermuda; and here it seems, where the power of appeal or remedy is more remote, and the calamity more lasting, here the repetition of Disappointment awaits my weary course. One half of my sober expectations failed the moment that I landed. I took upon me, in my honest confidence, an honorable means to hope to wipe off former sorrows and losses. I brought with me my wife and children (these I had left behind, when I went to Bermuda to save them in health at home), because of the prospect this plan and my position in Society appeared to be likely to afford, and because in plain truth it was enjoined on me as a duty, which even now, in comparative poverty, in great distress of mind, originating from causes I am guiltless in, my patient frugality, I may humbly discharge.

1827.
26 March.

Commission of
W. H. Moore.

Correspondence
transmitted.

Reverses
sustained.

1827.
26 March.

Official
testimony
in favour of
J. Holland.

Financial loss.

Exchange
of offices.

Increases
in salary.

Offer for service
in other
colonies.

To come, however, to the reason why I, a person whom His Majesty has once trusted with all the Law Offices and the Fiscal in one Colony, and whose Minister says to him, at parting with his former appointments, "If you return to Bermuda, I will not fail to recommend you to the best Offices of Sir Hilgroove Turner; or, if any facilities should present themselves for exchanging you, I will with pleasure bring your name before Lord Bathurst," should feel this vicissitude in a more than ordinary degree, and should experience the pecuniary loss of £500 per annum, paid from the British Parliament for the Attorney General, beside the emoluments of Auditor General, Solicitor General, and Advocate General. I shall advance another fact to show I wrote to Mr. Huskisson, and told him I felt it no less my interest than my duty to mention this offer to him, and that my intention was to avail myself of Mr. Horton's kind intimation, whenever there was a chance of changing my Offices in Bermuda for, I had almost said, any other place. I sent him the reports from the Governor and Council, and asked his powerful influence in aid of Mr. Horton's generous intention, for they showed my unabated labour and might produce a favourable impression on his mind; and I hoped they would be the means of removing me to some other Colony, where a more extended application of Industry held out a better prospect of success, than I could hope or expect in Bermuda; and the Solicitor Generalship of New South Wales was the appointment, I sought, with such an assurance of professional success and employ that I boldly ventured expressing the deepest sense of obligation for his former services, which had introduced me into the way of promotion even out Bermuda; if gradual increase in salary is any proof of the good opinion of the Department, I had it. Mr. Palmer, Mr. Forbes, Mr. Esten and I, in the first instance, had £100 as Attorney Generals; in a short time, I was allowed £300, and at last £500, with a promise from Mr. Horton, in a letter, I am proud to show, of further allowance. I gave Mr. Huskisson my solemn assurance of continued efforts to deserve his good opinion. I settled with Mr. Horton in order to avail myself of this, as I then considered, important service, to have Leave of absence from Bermuda. I volunteered for any of the Colonies excepting the West Indies, Ceylon, Mauritius or Africa, in any situation that would give me and my family the means of a respectable sustenance, without the necessity of that painful separation from my wife, which the climate and my limited income in Bermuda, if I returned there, would incur. I pledged myself to the zealous and faithful discharge of any Duties, required at my hands, expressing, with

the same sincerity as I do now, a grateful acknowledgement of the generous disposition, he had manifested towards me. In page 280, is a letter to Mr. Hay, March 18, 1826, beginning with, "I did not know until yesterday that, by an arrangement in the Colonial Office, it would be my duty to correspond with you on any matters connected with New South Wales. In the want of such information, I applied to Mr. Horton, who introduced me into colonial Employ," and so forth; but read it yourself, Sir. I have sent it for that purpose as an answer to any supposititious reasons, that may resist my right, spring from wheresoever they may. The next fact I call your attention to is a private letter from my friend, Mr. R. W. Horton. In it, he says, "If you will show to Mr. Huskisson your letter to me and this answer, I am persuaded that he will concur with me, as to the unavoidable necessity of delay in the final Settlement of your Bermuda claims. I have directed an application to be made to the Agent for New South Wales, and, if it should be in his power to advance you a further sum of £200 on account, such advance, together with the assistance of your private friends, are the only resources which I am aware are available for you at the present moment." Again, here is my friend, Thomas Wilson, M.P. for London, page 992, says "my suggestion of dating your half pay for New South Wales from the 1st of May, the same day on which you were dispossessed and Mr. Musson benefitted by the pay of Bermuda." This same gentleman, in his letter to Mr. George Baillie of the Colonial Office, No. 930, dated 18th July, 1826, says "I shall not hesitate to recommend Mr. Holland to make a new account, founded on your suggestion, and claiming salary as follows, stating how; but I hope I may be also allowed to claim for him that, as Mr. Musson's salary begins with the 1st May last, so Mr. Holland ought also to receive his half pay for New South Wales from the same date, instead of from the date of his embarkation. I shall be most happy to see matters thus brought to a compromise, rather than to continue a discussion of this nature"; but read the letter itself, and, at 933, stamp Brooksbank's receipt. Is it not clear, Sir, that I exchanged Bermuda for New South Wales from the 1st of May, upon the terms, proposed and submitted to by Mr. Baillie on the part of the Colonial Department, or Mr. Wilson on mine, which were finally confirmed by Mr. Horton, who addressed a letter to Mr. Hay, informing him of what directions he was to give to Mr. Barnard in furtherance of his Settlement with Mr. Wilson in my presence; afterwards I saw Mr. Hay and had a long conversation with him. Thus did both the Under Secretaries of State recognize the transaction, and Mr. Musson is appointed in my stead

1827.
26 March.

Correspondence
with
R. W. Hay;

with
R. W. Horton;

and with
T. Wilson.

Exchange of
appointments.

1827.
26 March.

Reference to
correspondence.

Absence of
vital despatch.

from 1st May, 1826; in corroboration of these facts and to save time, I very respectfully request you will do me the justice to refer to the letters, which you will be found in my Portfolio (sent herewith) 971, 992, 976, 920, 885, 872, 866, 857, 809, 930, 714, 729, 795, 797, and to Mr. Stephen, Colonial Counsel, in the Index of the smallest portfolio. I confidently refer to this phalanx of evidence to remove the slightest doubt of my having been exchanged from Bermuda to this place in reciprocal office. I was Solicitor General there; the only remark of the Chief Justice, which affects me, is about the letter from the Secretary of State; and, as I have all along said, I lost or rather left a sealed copy of it behind me, and, out of a correspondence extending over 1,000 pages of letters with the Department, this is the only one, of which I had not a copy, from the circumstance of its having been sealed, when delivered to me, which was a long time previous to Mr. Baillie's and Mr. Wilson's meeting, upon which the final arrangement respecting me between Mr. Horton and Mr. Hay was made. I yet hope, therefore, that this explanation will do away with his Excellencie's Objections, as they are evidently venial ones, and as I can shew those original Letters, which leave my connexion without doubt. If, however, they have not the desired influence, I have to request that a copy of this communication may be sent by the first opportunity to the principal Secretary of State for the Colonial Department, to whom I shall also appeal for compensation by the exclusion, I am suffering under, from the high and important office, His Majesty has invested me with. You will have the goodness to return me my Portfolio, 3 in number, when my object is answered.

I have, &c.,

[*Not signed.*]

[Enclosure No. 5.]

Copy of the Chief Justice's Letter to Mr. J. Holland, 27th
January, 1827.

Sir,

In reply to your letter of this day's date, requesting to be informed of my reasons for not swearing you into Office as Solicitor General of New South Wales, I have to state that you have not produced your Patent, or any proof of the existence of any patent, appointing you to that high Office. His Majesty appoints his high Officers in this Colony by virtue of his prerogative in the same manner and form, as those Officers are appointed in England, namely, by Letters Patent under Seal of the Colony. Until I am satisfied that you are regularly appointed to the very high Office, you claim, I cannot legally swear you in, or recognize your Authority in the Supreme Court.

Reasons for
refusal to
administer
oaths as
solicitor-
general.

In the ordinary course of Colonial Appointments, a Warrant, under His Majesty's Sign Manual, is transmitted by the Secretary of State to the Governor, who, thereupon, causes Letters to be made Patent. But this course is frequently deviated from; and an Official Letter from the Secretary of State is considered a sufficient Warrant for the Governor; but, in all cases where the appointment is under the Great Seal of the Colony (as is the Case with the Office in question), a formal Commission under such Seal is indispensable.

I have, &c.,

FRANCIS FORBES.

1827.
26 March.

Procedure
in colonial
appointments.

[Enclosure No. 6.]

COLONIAL SECRETARY MACLEAY TO MR. J. HOLLAND.

Sir, Colonial Secretary's Office, 23rd March, 1827.

In acknowledging the receipt of your Letter, on the subject of the Office of Solicitor General in this Colony, I am directed to inform you that a copy of it will be forwarded, as you desire, to the Principal Secretary of State, as, in the absence of the necessary Official Communication, it is not in the Governor's power to place you, or any other person, in the situation, to which you state you have been appointed; and His Excellency can only regret the inconvenience, to which you may be subjected, by the non-arrival of the Order for your appointment.

Official reply
to letter.

I have, &c.,

ALEX. MCLEAY.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(A private despatch per ship Manlius.)

My dear Sir, Downing Street, 27th March, 1827.

27 March.

In consequence of the enclosed Letter, which I have received from Mr. Robert Ward, I take the liberty of recommending the Gentleman, of whom he speaks so favorably (Mr. Michael Phillips), to your protection, with the request that you will afford him any reasonable facilities, which may be in your power, in the prosecution of the objects with which he is proceeding to New South Wales.

Recommend-
ation in favour
of M. Phillips.

I remain, &c.,

R. W. HAY.

[Enclosure.]

MR. R. WARD TO UNDER SECRETARY HAY.

Civil List Audit, Whitehall Yard,

My dear Hay, Monday, 26 March, 1827.

Agreeably to your kind permission, I put the request I made you for a letter of recommendation in favour of Mr. Michael Phillips to General Darling in writing. He is a

1827.
27 March.

Recommend-
ation in favour
of M. Phillips.

Gentleman extremely well connected in the City, and I understand of excellent personal Character. As a proof of which, going out to Sydney as a Settler with a Grant of Lands his friends fit him out with a Cargo of the value of £20,000. In this situation, it would be of consequence to him to have his name made known to the Governor, Mr. McLeay, Mr. Wemyss, or any other Gentleman under the Governor, whose countenance and protection may be of use to him. If you could send me any letter or letters you may please to write in his favour, you will much oblige,

Yours sincerely,

R. WARD.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Magnet: acknowledged by right hon. W. Huskisson, 21st September, 1827.)

Dear Sir,

New South Wales, 27th March, 1827.

Statements in
public press.

I have alluded in my private letter of the 24th inst. to the circumstance of an Article, which appeared in the *Monitor* of the 9th; and, as this subject has now been brought forward in the *Australian* of *this morning** (just as the *Magnet* is preparing to sail), probably with a view of its transmission to England without my having time to write upon the subject, a practice not altogether new here, it may be necessary to explain the circumstance more fully than I have before had the opportunity of doing.

Effect on
magistrates of
decision by
J. Stephen.

Soon after the "*Monitor*" of the 9th inst. appeared, containing the Article in the Enclosure No. 1.† The Superintendent of Police waited upon the Colonial Secretary to inform him that his brother Magistrates had taken alarm, supposing they had been authorized to act summarily in the case of Prisoners, but that they were now apprehensive their proceedings might subject them to prosecution. The Colonial Secretary immediately communicated this to me; and I observed that the Reports in the Newspapers were generally so inconsistent with the facts, they pretended to represent, that I would write to Judge Stephen to know, if the statement in the *Monitor* was correct. I did so, as will be seen by the enclosed copy of my letter, confining myself to the simple enquiry whether the Report was correct, and merely observing, if it was, that it would be necessary to apprize the Magistrates of the fact. Nine days having elapsed without any notice having been taken of my letter, I wrote to Mr. Stephen to apprize him of this circumstance, and requested he would reply to it. I then received on the 19th his letter, dated the 12th Inst.. of which I transmit a copy, and in which Mr. Stephen imputes to

* Note 57. † Note 49.

me, without any ground, a desire of interfering "between the Supreme Court and the other tribunals of Justice, . . . to teach the Justices of the Peace that they are to look to the Government as the Director of their proceedings, and to lessen that deference which the Law requires from the inferior to the Supreme Courts."

1827.
27 March.

Interference
of governor in
law courts
alleged by
J. Stephen.

I might ask on what ground Mr. Stephen has come to these conclusions? They cannot have been formed on my general conduct, any more than on the enclosed Letter which appears to have inspired his suppositions.

I observed Mr. Stephen speaks in his letter of this being the *second* occasion, he has been called on to explain his conduct. If it is the fact that I have before written to him, as he states, it is rather curious that neither myself, my Private Secretary, nor the Colonial Secretary has any recollection of it. But I shall refer in order to my reporting officially by the next opportunity, and have no doubt that his misconception of my intentions will be as evident in the case alluded to, as in the present.

I cannot close my letter without adding that the effect of putting the Editors of the Newspapers here in possession of the Communications, made by the Government to the Departments, is no less mischievous and injurious, than a Judge declaring gratuitously, from the Bench that he never would allow the Prisoners to be impugned or treated carelessly, at the very moment when it was evident to the whole community that the Newspapers were, and had been for some time past, exerting themselves to rouse the Convicts against the Government.

Mischievous
result of
J. Stephen's
declaration.

I enclose the "Australian" of this day, in which you will see the Article alluded to in the commencement of my Letter. The *finesse* of supposing the Letter to Mr. Stephen to have been written by the Colonial Secretary, instead of me, is too flimsy to impose on any one. The materials for the Article, alluded to, could only have been supplied by Judge Stephen; and I, therefore, appeal to my Lord Bathurst for that protection, which I trust I shall be considered entitled to at His Lordship's hands. I am satisfied His Lordship will see whether there was any thing irregular or not in my communication to Judge Stephen, that his instrumentality to the abuse of the Government through the means of a Newspaper, which for some time past has been remarkable for its hostility, is highly derogatory and unbecoming his situation and character as Judge.

Details given
to press by
J. Stephen.

The introduction of the *second* article in the "Australian" on the *Press* is still more extraordinary than the first. Lieut't Governor Arthur sent up to me two Bills, certified by Chief Justice Pedder, which were intended to be passed at Van

Information
supplied to
editors by
F. Forbes.

1827.
27 March.

Information
supplied to
editors by
F. Forbes.

Diemen's Land. I referred these confidentially to Judge Forbes, who was averse from their being adopted or agitated here; and as the subject had been already referred Home, I wrote to Lieut Governor Arthur declining to bring it forward. No other person was made acquainted with the circumstance by me except Mr McLeay and my Private Secretary.

But here everything finds its way to the Press, and is distorted to answer the crooked designs of the Editors.

I remain, &c.,

RA. DARLING.

P.S.—This letter was written in great haste in consequence of the appearance of the "Australian" of the 27th March at the moment, when the *Magnet* was getting under weigh, and which had led to the last paragraph (which commenced "Lieut. Gr. Arthur sent up," etc.) not having been properly introduced. I now beg leave to explain that it refers to the 2nd Article in the "Australian" of the above date. The first article is an attack on me in consequence of my correspondence with Judge Stephen; the second exposes a confidential communication, which I had with the Chief Justice.

RA. DARLING.

[Enclosure No. 1.]

GOVERNOR DARLING TO JUDGE STEPHEN.

Sir,

Government House, 10th March, 1827.

Request for
confirmation
of report in
Monitor.

I request you will be so good as to inform me whether the following paragraph, which appeared in the "Monitor" of yesterday, contains a correct statement of the opinion, delivered by you in Court, as, if the Magistrates have no greater power in the case of Prisoners of the Crown than in that of Free Men, it will be necessary to apprize them of this fact.

"His Honor Judge Stephen observed that he wished it to be understood that the sentiment uttered by the Acting Attorney General, namely that the Magistrates, knowing the applicants to be Prisoners of the Crown, considered their being put into the Watch house as an Act which, as Prisoners of the Crown, the said Justices could take a greater liberty of doing than if they had been free men, *was erroneous*."

"The learned Judge then, with infinite satisfaction to the Auditors and honor to himself, deprecated such a principle, and begged it to be understood that the rights of Prisoners were as sacred in the eye of the Law as those of freemen; and, while he had the honor of sitting where he did, he would never allow them to be impugned and treated carelessly."

I have, &c.,

RA. DARLING.

[Enclosure No. 2.]

1827.
27 March.

GOVERNOR DARLING TO JUDGE STEPHEN.

Sir,

Government House, 19th March, 1827.

Nine days have now elapsed, since I had the honor of writing to you officially on the subject of an opinion, which you are stated to have delivered in Court, and which appears to implicate the conduct of the Magistracy. As I have not yet received an answer to that Letter, I do myself the honor to enclose a Duplicate of it, conceiving that the original must have miscarried; and, as the subject is of importance, I must beg to hear from you without loss of time.

Request for
reply to letter.

I have, &c.,

RA. DARLING.

[Enclosure No. 3.]

JUDGE STEPHEN TO GOVERNOR DARLING.

Sir,

Ultimo, 12th March, 1827.

I have the honor to acknowledge the receipt of your Excellency's letter of the 11th Instant, requesting to be informed whether a report, which appeared in a Newspaper called the Monitor, contains a correct statement of the opinion of the Court upon the matter, therein referred to, in order that your Excellency may put the Magistrates upon their guard (etc. according to the substance of the letter). I can feel no hesitation in informing your Excellency that the statement, alluded to, does not contain a correct report of what fell from me in Court. In making this explanation, however, to Your Excellency, I feel that I am bound, in duty to your Excellency as well as to myself, candidly to state that the manner,* in which your Excellency has called upon me to correct the mis-statement of a Newspaper, appears to me to be no less objectionable in itself, than in the object† which your Excellency appears to have contemplated, namely, of instructing the Justices of the Colony in the exercise of their duty, appear to be irregular. Such an interposition of the head of the Government between the Supreme Court and the other Tribunals of Justice is, I think, calculated to weaken the confidence, which should prevail between the several Courts of the Colony, to teach the Justices of the Peace that they are to look to the Government as the director of their proceedings, and to lessen that deference which the Law requires from the inferior to the Supreme Courts. I should not have pressed these

Reply by
J. Stephen.Objection
to alleged
interference
of governor
in law courts.

* *Marginal note by Governor Darling.*—In what manner was he called on to correct? It will be seen, on reference to Enclosure No. 1, that he was merely asked whether the Report in the Paper was correct.

† *Marginal note.*—What object does it appear I contemplated? I cannot allow Judge Stephen, or any one else, to suppose what my intentions were, in order to make use of such suppositious intentions, as an argument for attacking my conduct.—R.D.

1827.
27 March.

Objection
to give
explanations
to governor.

remarks upon Your Excellency's attention on this occasion, had it not been the *second*,* on which I have been called upon, as Judge, to explain to your Excellency, as the Governor, the grounds of my conduct on the Bench; and I take the opportunity of respectfully suggesting to your Excellency that the ease may be transmitted to His Majesty's Government in England for the purpose of obtaining the opinion of His Majesty's Law advisers, how far your Excellency may be authorized to call upon me, as a Judge, in the exercise of my Office, to explain any statements, which the Editor of a Paper may please to put in my mouth, or to become the medium of interpreting the decisions of the Supreme Court to the inferior tribunals of the Colony.

I have, &c.,

JOHN STEPHEN.

[Enclosure No. 4.]

[*This was a copy of the issue of the "Australian" newspaper,† dated 27th March, 1827.*]

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 16, per ship *Manlius*; acknowledged by Governor Darling, 1st December. 1827.)

30 March.

Museum to be
established.

Sir,

Downing Street, 30 March, 1827.

It having been represented to me that it would be very desirable were the Government to afford its aid towards the formation of a Publick Museum‡ at New South Wales, where it is stated that many rare and curious specimens of Natural History are to be procured, I do myself the honour to acquaint you that, although I feel a difficulty in authorizing the commencement of any Building for that purpose, until an Estimate of the expense shall have been first submitted to my consideration, yet I am disposed, in the meantime, to allow a Sum, not exceeding £200 per annum, to be disbursed for the purpose of assisting in the accomplishment of this object; and, as one of the first steps towards ensuring its success seems to be the sending out some proper person to assist in collecting and arranging such specimens, as it may be possible to procure in that quarter. I have been further induced to consent to the appointment of a young man to that particular duty, who has been recommended to me as peculiarly fitted for it; and who will, therefore, be immediately sent out to the Colony in the capacity of Zoologist

Appointment
of zoologist.

* *Marginal note.*—I have no recollection of the communication, alluded to, which is some proof that my desire to interfere with the *due* Administration of Justice is at least unknown to myself. I shall ascertain from Judge Stephen the instance, to which *He* and the "*Australian*" of this day allude, and shall explain it, when I report officially on this matter.—R.D.

† Note 57.

‡ Note 58.

with the same rate of Salary and allowances, as appear to have been given to Mr. Frazer, the present intendant of the Botanic Garden at Sydney.

I have, &c.,
BATHURST.

1827.
30 March.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 17. per ship *Manlius*; acknowledged by Governor Darling, 1st December, 1827.)

Sir,

Downing Street, 30 March, 1827.

I have had the honour to receive your Dispatch, No. 58 of the 3rd of September last, reporting the arrangements, which you had adopted for placing the Establishment of the Female Factory at Parramatta under a better system of management, founded on the Report and recommendation of a Board, appointed to examine into the state of that Institution. I have much pleasure in communicating to you my Approbation of those arrangements, which appear a great improvement compared with the footing, upon which the Factory was originally placed; and I trust you will not be disappointed in your expectations of the benefits, which will result, in a moral point of view, by the encouragement, which you have held out to Mechanics in the employ of Government and others to form Matrimonial connections, by granting to them, when married, greater Indulgences than would otherwise be conceded to them, a measure, which I am also happy to acquaint you, meets my concurrence.

Approval of
new system
at factory;

and of
encouragement
of matrimony.

I have, &c.,
BATHURST.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 18. per ship *Manlius*; acknowledged by Governor Darling, 1st December, 1827.)

Sir,

Downing Street, 31 March, 1827.

31 March.

I have the honor to acknowledge the receipt of your dispatch, marked "Separate," dated the 7th October, 1826, in which you state that you have appointed Mr. Hoddle and Mr. J. B. Richards to be Assistant Surveyors on the fixed Establishment, with a Salary of £250 per Annum each.

Salary of
R. Hoddle and
J. B. Richards.

In my reply to your Dispatch of the 27 July, I approved of the Augmentation of the Salaries of those two Gentlemen; and, as they will under that Authority be in the receipt of an Income at the rate of £200 per Annum, which in the case of Mr. Richards is double the amount, which he originally received, I do not think it necessary to place them at once upon the scale of remuneration, which you have now proposed, although I may be disposed at some future period to consider them as having a claim to

1827.
31 March.

this further addition, if you shall continue to be as satisfied with their exertions in the Public Service, as you have expressed yourself to be in the dispatch now under acknowledgement.

I have, &c.,

BATHURST.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 19. per ship *Manlius*; acknowledged by Governor Darling, 1st December, 1827.)

Sir,

Downing Street, 31 March, 1827.

J. Butler
indemnified
from costs of
law suit.

I have the honour to acknowledge the receipt of your Dispatch. No. 64 of the 9th Sept. last, reporting the circumstances, under which you had been induced to indemnify Captain Butler of the 40th Regiment for the amount of the Costs of an Action at Law, which was instituted against him by an Inhabitant of Sydney for false imprisonment, that Officer having in support of a Sentry in discharge of his duty been the means of the Prosecutor being detained.

As there does not appear to have been any irregularity attending this proceeding on the part of the Military, who, from their desire of bringing the Offender immediately before the Civil Authority, acted in strict conformity with the Regulations of the Army (the detention of the Party in the Watch House being the result only of the Police Office not being at that time open), I have to approve of your having taken upon yourself to defray the expenses of the Suit on account of the Public.

I have, &c.,

BATHURST.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 20. per ship *Manlius*; acknowledged by Governor Darling, 1st December, 1827.)

Sir,

Downing Street, 31 March, 1827.

Despatch
acknowledged.

I have the honour to acknowledge the receipt of your Dispatch of the 1st September, 1826, requesting that a further Supply of Convicts may be immediately forwarded to New South Wales, the Prisoners of the Crown at the disposal of the Colonial Government being totally inadequate to the wants of the Settlers, and adverting to the advantage which the Colony would derive, if a number of free Mechanics and Men, brought up to Agriculture, were to be sent out to the Colony.

Having brought under the notice of Mr. Secretary Peel the observations contained in the first part of your Dispatch, I do myself the honor of transmitting for your information the extract of a letter, addressed to my Under Secretary by

Mr. Hobhouse, from which you will observe that 1,142 Male Convicts are now on their passage or about to be conveyed to New South Wales and Van Diemen's Land, and that two Ships with female Convicts on board are also upon the point of leaving this Country for the same destination.

1827.
31 March.
Convicts to be transported.

With respect to your suggestions regarding free Labourers, I am afraid I cannot hold out to you much encouragement to expect that His Majesty's Government will be able to resort to this measure, as a means of obviating the inconvenience above mentioned, the difficulties of carrying into effect the arrangements connected with this proposition being considerably greater than you appear to be aware of. In the first place, it would be impossible to prevent other persons than those of the description required from taking advantage of any offer, which the Government might make for conveying such persons to the Colony free of expense; and, in the next place, the selection of Individuals of industrious habits, who might be calculated to answer the objects contemplated, would be no easy matter to effect, not to mention the heavy expense, which would result from the measure, if the encouragement for the emigration of this Class of persons were to be given to any great extent.

Difficulty in encouraging free immigrant mechanics.

Should you, however, upon further consideration, be able to suggest some method, by which these objections could be removed, and should the Settlers, who require the assistance of these Labourers, be willing to undertake to defray the whole or at least a considerable part of the expenses of their Voyage out to the Colony, as well as to ensure to them constant employment upon their arrival, His Majesty's Govern't would be disposed to give every countenance in their power to a project, which, if practicable, would I have no doubt produce very desirable results.

I am, &c.,

BATHURST.

[Enclosure.]

EXTRACT of Letter from H. Hobhouse, Esqre., addressed to R. W. Hay, Esqre., dated 14th March, 1827.

"I HAVE laid before Mr. Secretary Peel your letter of the 8th instant, with its inclosed extract of a Dispatch, which Lord Bathurst had received from General Darling, Governor of New South Wales, requesting that a proportion of such Convicts, as may be available, may be immediately forwarded to that Government; and, in reply, I am to acquaint you for Lord Bathurst's information that 550 Male Convicts are on the eve of embarking for that Colony, and one Ship with 192 Prisoners is about to proceed to Van Diemen's Land. Shipping has also been ordered for the conveyance of about 400 more Male Convicts, one half

Convicts to be transported.

1827.
31 March.

of which number will be sent to the former Settlement, and one Ship is about to depart with female Convicts to each of those Colonies."

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 21, per ship *Maalius*.)

Sir,

Downing Street, 31 March, 1827.

Relief of
garrison at
Melville island.

I have had the honour to receive your Dispatch, No. 52 of the 30th of August, reporting the arrangements, which you had adopted for conveying the necessary supplies to Melville Island, and for relieving the present Garrison, composed of Men belonging to the Buffs, by a Detachment belonging to the 57 Regiment.

I am most anxious to receive accounts of the state of that Settlement, respecting which no information has reached His Majesty's Government for a very considerable time; and I hope, therefore, that you will send home, at the earliest possible period, after the return to Sydney of the Vessel which has been dispatched to that quarter, such intelligence as may reach you upon this interesting subject.

With respect to your determination of withdrawing the Garrison, I have no particular observations to offer, as the measure appears to have been rendered necessary by the near approach of the period, at which the removal of the Regiment of Buffs to India must take place, and the propriety of the Detachment in question being brought back to Head Quarters preparatory to its departure from the Colony.

Salary of
commandant
and surgeon at
Melville Island.

The remuneration of £200 a year, which you propose to grant to the Commandant of Melville Island, although much larger than I had authorized to be paid to the Officer, whom Major Campbell is appointed to relieve, does not, under all the circumstances of the case, appear to be unreasonable. Separated as that Station must be for a considerable number of years to come from all intercourse with the Seat of Government, I am not surprised at the difficulty, which you have found in getting a competent person to accompany the Detachment in the capacity of Surgeon; and therefore what would have been a proper compensation in ordinary cases cannot serve as a guide in the present instance. Upon this principle, I am induced to sanction the allowance at the rate of one guinea a day, which you have assigned to Mr. Gould, who has undertaken the duty of Assistant Surgeon, although its rate is certainly very high, as compared with the pay of the Commandant, and with the amount of the remuneration usually assigned to persons filling similar situations.

I have, &c.,

BATHURST.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 22, per ship *Manlius*; acknowledged by Governor Darling, 31st December, 1827.)

1827.
31 March.

Sir,

Downing Street, 31 March, 1827.

With reference to my dispatch of the 21st January last on the subject of the employment of Convicts in the Service of the Colonial Government, and with a view to obtain the most accurate information for enabling His Majesty's Government to devise means for diminishing the enormous expense of the Convict Establishment, I have to desire that a detailed Report may be sent home of the number of Convicts, who have been employed on the Publick Works at New South Wales for the last five years, to the latest period, specifying the nature of the work on which they may have been employed, and the place where it has been carried on; and you will at the same time be pleased to transmit a Return for the same period of the applications for Convicts, which may have been received by the Colonial Government, informing me of the manner, in which these applications have been respectively dealt with.

Report to be made on employment of convicts by government.

I have, &c.,

BATHURST.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 23, per ship *Manlius*; acknowledged by Governor Darling, 1st December, 1827.)

Sir,

Downing Street, 31 March, 1827.

Since I addressed to you my dispatch of the 18th of January, 1827, I have received yours of the 8th of September, marked Separate, accompanied by a letter from Mr. Crawford, the principal Clerk in the Office of the Colonial Secretary, in terms similar to those contained in the communication, which I received from him three months before; and I now request that you will inform that Gentleman that, under the circumstances which have induced you to adopt the arrangement, by which his emoluments have been reduced, having met my approbation, and as I see no reason for interfering with it, I cannot direct his receiving a higher pay than has been assigned to him under the new Scale of Salaries, which you have fixed, and which in his particular case seems to be fully adequate to the services, which he is capable of performing.

Refusal of request of R. Crawford for increased salary.

I have, &c.,

BATHURST.

[Enclosure.]

[This was a copy of R. Crawford's letter, dated 26th July, 1826; see page 552, volume XVII.]

1827.
31 March.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 24, per ship *Manlius*; acknowledged by Governor Darling, 1st December, 1827.)

Sir,

Downing Street, 31 March, 1827.

Sentence
passed on
C. Kenny.

I do myself the honour of transmitting to you the inclosed Copy of a letter, addressed to my Under Secretary by the desire of Mr. Secretary Peel, by which you will perceive that the allegations contained in the Petition of Cornelius Kenny, which were transmitted in your letter of the 16th September, do not appear upon enquiry to be true, and that the term of his Sentence was for life, as previously described.

I have, &c.,
BATHURST.

[Enclosure.]

MR. G. DAWSON TO UNDER SECRETARY HAY.

Sir,

Whitehall, 28th March, 1827.

A Reference having, by Mr. Secretary Peel's direction, been made to the Irish Government of the Petition of Cornelius Kenny, inclosed in your letter of the 12th Instant, as transmitted by General Darling from New South Wales,

I am to acquaint you for the Information of Lord Bathurst that it appears that Cornelius Kenny was sentenced to Transportation for Life in May, 1820, at the Assizes for the City of Cork, there having been found a Parcel of forged Notes on different Banks with forged Stamps in his possession.

I am, &c.,
GEO. DAWSON.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 25, per ship *Manlius*; acknowledged by Governor Darling, 9th October, 1827.)

Sir,

Downing Street, 31 March, 1827.

Extra pay
claimed by
J. Busby.

I have had the honour to receive your dispatch, No. 62 of the 7th September last, relative to the extra pay, claimed by Mr. Busby as Mineral Surveyor and Civil Engineer, in consequence of his having been employed in the years 1824 and 1825 beyond the period, prescribed in his original agreement with the Government, which stipulated that he should give the Colony the benefit of his services for a given number of days in each year, receiving at the rate of £1 per diem during the time he might be so employed.

The sum, which you have directed to be paid to Mr. Busby on account of those extra services, appears to have been calculated

at the rate of £2 2s. per diem, exclusive of his travelling expenses, for every day which exceeded the period, for which his Services could be demanded. Unless, therefore, you were guided by special grounds in granting to Mr. Busby the higher rate of remuneration (which, however, are not stated in the papers which you have sent home), I cannot but entertain the opinion that an allowance, calculated upon the former scale, would have been more proper. I trust, however, that you will now be able to afford me such information upon the subject, as will satisfy me of the propriety of your having granted to him the sum in question.

1827.
31 March.
Remuneration
granted.

From the frequency, with which the Services of Mr. Busby appear to be called into action, beyond the number of days specified in his original agreement, I am induced to take this opportunity of suggesting for your consideration whether it would not be more expedient, in an economical point of view, to enter into a new engagement with him, so that his services may be wholly secured to the Government, by assigning to him a regular annual Salary, but which should not in that case exceed £300 per annum.

Salary
suggested for
J. Busby.

I have, &c.,

BATHURST.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 26, per ship *Manlius*; acknowledged by Governor Darling, 1st December, 1827.)

Sir,

Downing Street, 31 March, 1827.

I have received your Dispatch, No. 63 of the 8th of September, reporting the circumstances, under which you had authorized an allowance at the rate of £150 per annum to be issued to Mr. Howe, the Government Printer; and I do myself the honor of acquainting you in reply that I see no objection to the arrangement, entered into by you with Mr. Howe, by which, in consideration of the above allowance, he engages to publish the several proclamations, etc., of your Government, and to supply a certain number of Copies of his Gazette for the use of the several Departments.

Approval of
allowance to
R. Howe.

As this allowance, however, is granted in consideration of work actually performed, the arrangement of course will not be considered as giving the party any claim of compensation, should it become advisable hereafter to substitute a different plan, which might lead to the allowance in question being withdrawn.

I have, &c.,

BATHURST.

1827.
1 April.

EARL BATHURST TO GOVERNOR DARLING.
(Despatch No. 27, per ship *Manlius*: acknowledged by Governor Darling, 1st December, 1827.)

Sir,

Downing Street, 1st April, 1827.

Despatch
acknowledged.

I have the honour to acknowledge the receipt of your dispatch of the 9th of September last, marked *Separate*, transmitting a Petition from the Presbyterian Settlers of the District of Portland Head, praying that their Minister, the Revd. J. McGarvie, may be allowed a Salary.

Subsidy
towards salary
of Presbyterian
minister.

Having received a similar application lately from the Scotch Settlers, established at Van Diemen's Land, I have, under all the circumstances of the case, directed that a small stipend should be afforded by the Government towards the support of their Minister, the amount of which is to be equal to the Sum, which the Presbyterians might themselves subscribe for that purpose, each contribution on the part of the Govern't on no account exceeding the sum of £100 per annum. Upon this principle, I am willing to sanction the payment of an allowance to the Revd. Mr. McGarvie; but, in communicating to the Revd. Dr. Lang, through whom the Petitioners have addressed their Prayer to His Majesty's Government, the assistance, which I have thus granted, it must be understood that it cannot be further extended; and that, although the allowance in question is now granted for the benefit of the Minister, resident at Portland Head, yet that, whenever the population of that particular district shall have so far increased in numbers and prosperity, as to admit of the Inhabitants taking upon themselves the whole expense of his support, it is possible that the present allowance may be withdrawn for the purpose of being bestowed on the Minister of some other District, where the Settlers may not be so well able to bear it.

I have, &c.,

BATHURST.

GOVERNOR DARLING TO THE COMMISSIONERS OF THE NAVY.
(Despatch per ship *Australia*.)

Gentlemen,

1st April, 1827.

Misconduct of
master and
surgeon of ship
Midas.

I have the honor to forward for Your consideration the Copy of a Letter from the Secretary of the Committee of Correspondence of the Church Missionary Society, enclosing one from the Reverend J. Norman and Mr. Lusk, who came out with their Families on board the *Midas*, Convict Ship, James Bargin, Master.

I have forbore to make any Enquiry into the subject of the Complaint of these Gentlemen, being satisfied, from an investigation which had taken place at the instance of other passengers, and from the Conduct of the Master and Surgeon, the latter in

particular having been seen in a state of intoxication in the Streets, that they are totally unfit for any charge; and I, therefore, request that they may not again be employed in any manner connected with this Government.

1827.
1 April.

I have, &c.,

RA. DARLING.

[Enclosure.]

[*A copy of this letter is not available.*]

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 28, per ship *Manlius*; acknowledged by Governor Darling, 31st December, 1827.)

Sir,

Downing Street, 2nd April, 1827.

2 April.

In reference to my dispatch of the 31st Ultimo, in which you were directed to send home certain particulars, therein mentioned, respecting the number of Convicts employed on the Public Works for the last five years, specifying the nature of the work on which they have been employed, and the place where it was carried on, etc., I am to desire that in making out those Returns each year may be specified separately, and that similar Returns of every subsequent year may be prepared and sent home with the annual Blue Book.

Instructions
re returns of
convicts.

I have, &c.,

BATHURST.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 29, per ship *Manlius*; acknowledged by Governor Darling, 1st December, 1827.)

Sir,

Downing Street, 2nd April, 1827.

I have to acknowledge the receipt of your dispatch of the 22nd of July and that of the 5th of September, 1826, acquainting me with the measures, which you had adopted in order to carry into effect His Majesty's Commands with respect to the Granting and Sale of Lands in New South Wales; and you transmit the Reports of the Surveyor General and the Land Board, in which are pointed out certain modifications, which have appeared to them advisable in the system, which has been directed to be observed on that subject.

Despatches re
grant and
sale of lands.

There are several material points, brought under discussion in these Reports, upon which you have not offered any particular observations; but, before adverting to them, I propose to convey to you such Instructions, as are deemed necessary in regard to those deviations from the general Instructions, which you have brought under the consideration of the Executive Council, who appear by their acquiescence to have entertained a due sense of the value of your recommendations.

I shall, in the first place, advert to that material alteration, which you have submitted, vizt. to dispense with the 34th, 35th,

1827.
2 April.

and 42nd Clauses of the Instructions,* by which no lands can be granted or sold, until after they shall have been surveyed or valued by the Commissioners, appointed for that purpose, and have been put up for sale during a period of six months.

Relaxation
of compulsory
valuation before
selection.

This appears to be a very necessary alteration in the present system, as the new Settler must be exposed to much inconvenience under the circumstances, which you have stated, if no remission of the principle of previous valuation be admitted. But, as the Survey and valuation of Lands, which are either to be sold or granted in the Colony, is a measure of primary and indispensable necessity, I can only approve of a relaxation of the rule in question, so long as there shall not be an adequate quantity of surveyed Land in reserve to admit of the Settler's Location on a spot, which may have been so prepared, an inconvenience which I trust will be shortly removed by the recent addition, which I have made to the strength of the Surveyor General's Department. Until, however, this desirable object be accomplished, I have to approve of the arrangement, which you have proposed, of permitting the Settler to occupy certain portions of Land, which may not be yet surveyed, with the understanding that it will be confirmed to him by Grant at a future period, and of reducing the selection of his grant to certain prescribed limits; the latter proposition, whilst it secures on the one hand a future valuation of the Lands, which may be so occupied, will on the other obviate much of the inconvenience, which would be otherwise experienced by the Settler, in proportion to the time which may intervene between his arrival and the commencement of his operations. I am also disposed to acquiesce in the propriety of doing away with that distinction, which was directed to be made between the Purchaser of Lands and the Grantee, and which left no alternative to the latter than of taking that portion of Land, which may have been rejected by the other party.

Land to be
equally
available for
purchase or
grant.

The restriction was originally imposed under the idea that it would prove of greater advantage to the Colony to dispose of the Lands by Sale, than by granting them to Settlers on the payment of a Quit Rent; but the observations, which are offered by the Surveyor General in his Report upon this subject, induce me now to think that it would be more desirable to place the two Parties, vizt., the Purchaser and the Grantee, upon the same footing as to the selection of the Lands, which they may respectively wish to obtain.

Abolition of
bonus for
employment
of convicts.

2nd. The indulgence, which by the former Instructions is given of allowing every Grantee to have credit for one fifth part of the Sums, which he may have saved to the Government by the employment and maintenance of Convicts, I admit to be a

* Note 59.

privilege, which there cannot be any necessity, under the present altered state of the Colony, of allowing to the Settler. The system of Grants laid down by Sir Thomas Brisbane, by which every Grantee was bound to receive and maintain one Convict for every 100 Acres of Land, first led His Majesty's Government to adopt the Regulation now in force, by which a bonus is offered for the employment of Convicts; but it now appears that a total change has taken place in the circumstances of the Colony, and that, instead of a great number of Convicts being thrown on the hands of Government, the supply falls infinitely short of the demand for their services. It is owing to this deficiency that such a competition exists among the Settlers to obtain them, and that it is no longer necessary to hold out any Premium to ensure their being taken off the hands of the Colonial Government. You will, therefore, consider yourself authorized to suspend the operation of this part of your Instructions, until such time as the demand for Convict Labour by the Settler shall diminish, either by the increased supply of Prisoners, or by the introduction of free labourers into the Colony, to which the present scarcity of Convicts may give rise. It may then be found desirable to revert to this expedient, as a means of reducing the expense, which the maintenance of a large body of Prisoners by the Publick would otherwise occasion.

1827.
2 April.

Abolition of
bonus for
employment
of convicts.

Before closing, however, my observations on this subject, I must impress upon you the difficulty I feel in reconciling the scarcity of assignable Convicts, of which I have received accounts from all quarters, with the enormous and increasing expense, with which this Country is still charged, on account of the Prisoners who are transported to that part of the World. I have always been given to understand that, when a Convict is assigned to a Settler, the Government from that moment are relieved from all further charge on his account, so long as he may remain in the service of that Master. But, if the Bills, which are drawn from the Colony connected with the Convict Establishment, continue of the same, if not of larger amount, as when fewer persons comparatively were employed and supported by private Individuals, there must be some latent defect in the system, or at least there is an apparent inconsistency which requires explanation.

Expenses
of convict
establishment.

The most satisfactory proof of the existence of the demand for Convict Labour would undoubtedly be the diminution of the sum, expended by the Government in their maintenance; and I trust that, under the improved and judicious system of management, which you will introduce, this reduction of expense will soon become manifest.

1827.
2 April.

Area of land
to be selected.

3rd. The next subject, to which it becomes necessary for me to advert, relates to the quantity of Land, which it may be proper to give to Settlers on their first arrival in the Colony upon the principle, laid down in the letters with which Individuals were formerly furnished on leaving England, vizt. "that they were to receive Grants according to their means of bringing the same into cultivation." Upon this subject, it appears to be your opinion, as well as that of the Council, that, according to the suggestions of the Land Board, Grants should be made to a Settler in the proportion of a Section or Square Mile (consisting of 640 Acres) for every £500, which he has the means of expending, and that four Square Miles or 2,560 Acres should be considered the greatest extent of Land, which any one can possess, as is already defined by the existing Instructions; it being provided at the same time that such Grants should be to a greater extent, when the Land is of inferior quality, and that they should not be less (excepting in the neighbourhood of Towns and Villages) than half a Square Mile or 320 Acres. Upon this point, it appears to me material in fixing the Capital, which a Settler should be required to possess to take into account as far as may be practicable the quality as well as the quantity of the Land to be assigned to him; and that it would be proceeding on an erroneous principle, if the same qualification in point of Capital for a Square Mile of Land, whether it be good or bad, were required of the Settler, since the amount of Capital to be produced in order to entitle a Settler to a given number of Square Miles of ground should necessarily bear a ratio to the quality of the Land, which may be comprized within that space; for, if one Grantee has a Square Mile of good Land, and another has the same quantity of bad Land, it is scarcely possible that these two parties can be upon an equal footing, if no distinction be made in favour of the person, to whom the poor land is given, and if he be required to make as great a sacrifice of Capital as the Party, who has been more fortunate in his selection, to which it may be added that the former cannot receive as great a return for the Money, which he will have to expend in the cultivation of his Grant, and therefore cannot be reasonably expected to incur so great an outlay upon his property. Under these circumstances, I am disposed to direct that the quantity of Land, which may be granted to a Settler, should be regulated by the value of the Acres, where it can be ascertained, rather than by the extent of the superficies of the Soil; or, in other words, that a Settler, who may be proved to be worth £500, should have 640 Acres if the Land be valued at 5s. per acre, and more or less land in situations where the Soil may be more or

Area to be
regulated by
quality of land.

less valuable; and, on the other hand, as the same quantity of Land in another direction may not be valued at more than 2s. 6d. per Acre, the Grantee, to whom may be allotted a tract of inferior Land, should be entitled (provided his means of cultivation be the same) to receive double the number of Acres to that which would be given to the other Party. The restriction proposed, excepting in the vicinity of Towns and Villages, to half a square Mile or 320 Acres (which is in the spirit of the 47th Clause of the Instructions) appears to be a very judicious limitation.

1827.
2 April.

Area to be
regulated by
quality of land.

4th. I entirely concur in the propriety of the measure, which you have recommended that, in all Grants and Sales of Land, "a specific reservation should be made of such portions of it as may hereafter be judged necessary for Roads, as likewise the right of erecting Bridges, and cutting such Timber, and quarrying such Stone, and removing it and other material, considered necessary for making Roads and Bridges and for putting them in repair." At the same time, I do not exactly comprehend what is meant by a mere reservation for Roads without any Claim existing against the proprietors of Land to be themselves concurrent in the formation of these and other necessary improvements through their own property. I do not perceive that any provision is made in your general Instructions with reference to this subject; but it seems very necessary that, in addition to the Capital which may be spent on the property, the proprietor should be concurrent upon some defined principle in such general improvements, as may be necessary to bring the Country into a due state of civilization. I fear that any permanent system, which does not make provision upon just principles for such assistance, must necessarily be very incomplete, as, without Roads, the Property can be of little value to the party, who after all is only called upon to execute that without which his own property would be comparatively useless. I do not mean to imply that the whole expense of such improvement should be borne by the Proprietors of Land; but it seems reasonable that they should contribute either by money payment or by work performed (in the same manner as is done by Statute labour in England) towards an object so desirable. In the case of large Grants of Lands remaining uncultivated beyond a reasonable time, I am clearly of opinion that the Govern't should exercise the power of compelling the Proprietor, after a certain period, to construct Roads with the view of preventing the interruption, which would otherwise arise to all communications with the more distant parts of the Colony; and that, in case of ultimate non-compliance on the part of the Proprietor, such land should be resumed by the

Reservations of
crown rights in
grants and
sales of land.

Proprietor to
contribute to
formation
of roads.

1827.
2 April.

Proprietor to
contribute to
formation
of roads.

Crown. There is another mode of carrying the same object into effect, which may be worthy of future consideration, namely, of making, in the case of the Lands to be sold, such an addition to the price as will provide for this necessary course of improvement; and should it hereafter be deemed advisable according to the suggestions of the Surveyor General to encourage the Settler to accept Grants of Land rather than to purchase it, a still further addition might be made either by an immediate or an eventual payment so as to operate in some degree as a discouragement to the Purchaser, especially if it be decided that no similar burthen should be laid upon the Land, which is held by the Grantee, or at all events that the contribution on the part of the latter should be to a less amount. These charges, however, must not be heavy in either case (though less where the Grantee is concerned), lest the Settler be deterred by the prospect of expense from commencing his operations upon so large a scale as he might otherwise be disposed to do. The management of the Roads should be vested in the Land Board, or some other Board of the kind, so as not to throw on the Executive solely the responsibility of making them.

Alienation
of land
prohibited for
fixed period.

5th. I fully assent to the propriety of adopting your recommendation that "a period should be fixed, previous to the expiration of which Settlers should not be allowed to dispose of or alienate their Lands."

Abolition of
tickets of
occupation.

6th. The entire discontinuance of Tickets of occupation appears a most necessary measure; and I am glad to observe that you have already taken steps for withdrawing from the Settlers an Indulgence, which appears not only to have been very extensively abused, but which interposes so many obstacles to the execution of the arrangements, which have been directed to be carried into effect in regard to the disposal of the Crown Lands. I see no objections, however, in cases where it may not be necessary immediately to resume Lands of this description, to permit the Parties to retain possession of them on paying an annual Rent of £1 for every hundred Acres, or a higher or less amount in proportion to the value of the Land which may be so occupied.

As I consider this proposed change to be of a very delicate nature, I need not point out to you the necessity of carrying it into effect by gradual means, or the propriety of executing it with the utmost impartiality and attention to the particular interests of the Parties concerned.

I am now arrived at a very important part of the subject, vizt. the proposed Regulation, by which Individuals, already possessing Land to the extent of 9,600 Acres, would be prevented from making any further purchase. Upon this point, I have to remark

that, if an Individual has brought his 9,600 Acres into such due and adequate cultivation, as may be consistent with the Rules laid down by the Land Board, I am not prepared to pronounce that it is prudent to adhere to the present restriction, by which he is prevented from becoming a Purchaser of an additional quantity. At the same time, I am so well aware of the strong representations, which have been urged by the Land Board against this permission (it being calculated in their opinion to lead to a very prejudicial monopoly), that I am unwilling, without further consideration of the subject, to introduce any alteration in the present system; and I am, therefore, upon the whole inclined to think that the safer course, as both more beneficial to the Individuals concerned and to the interests of the Colony, would be, instead of opening the door to more extensive schemes of purchase, to encourage the Settler to accept Grants of Land rather than to purchase them; and, with this view, although it will be very desirable to continue in force the Regulations for the Sale of Land in cases, where the Colonist may desire to increase their property by the purchase of them, I am of opinion (as I have before mentioned) that all peculiar advantages reserved to the Purchaser, particularly as regards priority of selection, should be done away. Amongst other reasons for encouraging the granting of Land, rather than its sale, may be urged the difficulty of retaining any controul over the Purchaser as far as regards the necessity of cultivation. The Government has the power of divesting the Grantee of his Land, unless he executes strictly the degree of cultivation, imposed upon him during the seven first years; after which period, provided that he pays his Quit Rent, there is no further claim upon him with respect to the special application of Capital to his property. The Purchaser having his Land in fee simple, the Government have no claim upon him, after the purchase Money has been paid as to the Capital which he is to employ upon it.

The most equitable mode of bringing the Purchaser under the same degree of controul as the Grantee in respect to the necessity of cultivation will be by diminishing from the contributions to be exacted from him for Roads, Bridges, and other publick Works, in proportion to the amount of the Capital, which he may expend for improvement on the Land, which he has purchased over and above that outlay, which he is bound by the Regulations to expend, vizt. one half of the value of the Land at the time of the purchase. I now proceed to observe upon those alterations, alluded to in the Reports of the Surveyor General and of the Land Board, which you have not considered as requiring any particular notice as being either according to

1827.
2 April.

Limitation
of holdings.

Different status
of grantee and
purchaser.

Method of
controlling
purchasers.

1827.
2 April.

Regulations re
sale of land.

the general Instructions or matter of local Regulation, but to which, however, I deem it necessary to advert, whilst entering so fully, as I have done in regard to the other points, which you have brought under my notice connected with this subject.

First, "That no Sale whatever of selected portions of Land should be permitted, until they shall have been previously surveyed and valued, and afterwards advertised for Publick Sale in the manner prescribed by the Instructions under the Sign Manual."

To this Regulation, I see no manner of objection.

Secondly, "That no individual should be allowed to purchase Crown Lands without having previously obtained permission in writing from the Governor, specifying the number of Acres for which such Individual is allowed to tender."

In approving of this Regulation, I take the opportunity of observing that, in all cases of Purchase, proper measures should be taken for enforcing the clause respecting the sum to be laid out in the cultivation of the Land.

Thirdly, "That the Regulations laid down in His Majesty's Instructions, which prohibit any Individual from purchasing more than 9,600 Acres, shall be rigidly enforced; and that no Proprietor among the present Landholders in the Colony, who is already possessed of more than 20,000 Acres, shall be allowed under any pretence whatever to make a further purchase of Crown Lands."

On this subject, I have already stated my opinion, to which I have only here to add that, if it should be thought expedient on mature consideration to relax hereafter from the present regulations respecting the further Sale of Land, such permission should only be granted in cases, where it has been reported by the Land Board that a sufficient portion of the cultivable part of any former Grant has been brought into cultivation, and that a due attention has been paid by the Proprietor to the formation of Roads, so as to facilitate the communication through the other parts of his Property with the more distant parts of the Country.

Fourth and Fifthly, "That, whenever the Commissioners and Surveyor General shall have completed the Survey and valuation of a Parish, a Proclamation should be inserted in the Official Gazette, notifying the number of allotments for Sale, and annexing the Schedule of the different Lots of a Square Mile, each to shew the extent and boundaries of the Parish and of each Lot, as well as the average price of the Land for Sale, a chart of which, together with the schedule, being at the same time publicly exhibited at the Office of the Surveyor General, and in duplicate at the Colonial Secretary's Office."

This appears to be a very necessary Regulation, subject to the further arrangements and alterations, communicated in your Dispatch No. 60, as well as the succeeding Regulation with regard to the mode of receiving offers for Sale, vizt. that Scaled Tenders should be received "from such persons only as had previously obtained the Governor's permission to purchase," which is calculated to facilitate the decision on the comparative merits of the Applications.

1827.
2 April.
Regulations re
sale of land.

Sixthly. "The Commissioners suggest that all those Settlers, who have received a Grant of Land without purchase, should not in future receive any additional Grant from Government except by Purchase."

Grantees not to
be prohibited
from further
grants.

This restriction I see no occasion for imposing, for the reasons explained in another part of my Dispatch.

Seventhly. The Surveyor General submits whether limited Sales to resident Settlers upon the condition of 3 years credit at a fixed price of 5s. pr. Acre, and to new Settlers at a rent for the three first years previous to purchase, will be any material departure from the spirit of His Majesty's Instructions.

Concessions
proposed for
purchasers.

Although this proposal with respect to the Settlers, who may wish to buy Land upon credit, is at variance both with the spirit and the letter of the Regulations, alluded to, and must, therefore, be for the present refused, I am not prepared to say that it may not be judicious hereafter to alter them. The new Settler would scarcely, I should conceive, consent to pay Rent for Land, which he means ultimately to purchase, when, if it were to be granted to him, he would be free of Quit Rent for a certain number of years, and may purchase after all if he desire it. I see no objection, however, to allow a Settler, who intends ultimately to buy, to pay a Rent for the Land in the mean time, if he should prefer this course to the other; but, in that case, the Rent, with which he would be charged, should be fixed according to the actual value of the Land and with reference to its peculiar situation.

Eighthly. The Surveyor General recommends that one Seventh of each Parish, as heretofore, may be reserved for the Church and School Estates, it not being possible within the range of the Settled Country to make the reserves as directed, vizt. in one continuous Tract.

Clergy and
school estates.

I see no objection to this proposal, which in some cases may be a more judicious arrangement for appropriating the Land destined for the support of the Ecclesiastical Establishments than the original plan; but I agree in opinion with the Land Board that, "where no local difficulties or other obstacles,

1827.
2 April.

intervene to prevent it," and unless some good reason can be shewn for the deviation, it would be advisable to adhere to the former Instructions.

Valuation of
lands in settled
districts.

Ninthly. The Surveyor General mentions a difficulty of fixing, in accordance with the Instructions, an equitable average value on the unappropriated Lands in the Settled Districts, from the greater proportion of such Lands being of little or no value; and the Land Board suggest whether it might not be for the interest of the Settler that the Commissioners should be instructed to propose two or more average values of Land in those Parishes, where unusual irregularities of Soil prevail, and where local circumstances require such modification.

I fully admit the propriety of two or more average rates being fixed for the reasons above stated.

Nothing indeed could be more unfair than that those Settlers, who are located on the refuse Land of a Parish, should pay an average Rent on which the value of the good Land already settled is taken into the account.

Minimum age
for grantees.

Tenthly. The Land Board recommend that no Grant of Land shall be made to any person, who has not arrived at a competent age to undertake its management, which they think ought to be limited to 18, if not to 21 years.

A Regulation to this effect is highly proper; and I am to desire that no Grants of Land be made in future to any Person under the Age of Twenty one.

Government
reserves to be
thrown open.

Eleventhly. The Land Board recommend the giving up for the use of the Settlers certain extensive Tracts of Land, hitherto retained by the Government in the vicinity of Bathurst, from that to Wellington Valley and to the West of Macquarie River. To this proposal and to the further extension of the boundaries, as proposed to the Executive Council in your Minute of the 22nd of August, 1826 (inclosed in your dispatch No. 60), I see no objection; and I entirely agree with the Land Board that it would be more advisable to give the Settlers the benefit of these extensive tracts of Country, the occupation of which by the Government would be attended by a heavy expense without any commensurate advantage.

Title deeds to
issue on
completion of
financial
obligations.

Twelfthly. I have also to signify my acquiescence in the suggestion of the Commissrs that, whenever satisfactory proof shall be brought forward of the Expenditure by the Grantee of the sum, which he is required to lay out within seven years upon his land, at any period after twelve months from the entry to Possession, the Settler in such case shall have an immediate right to receive his plenary Title Deeds to the Grant without being obliged to await the expiration of the term of Seven years.

Thirteenthly. The Commissioners strongly recommend an extension of the period for paying up the purchase Money on the Crown Lands. They mention three modes, by which payments of the price might be rendered easy to the Purchaser; but the following appears to them to be the most simple and the best calculated to encourage the Settler, at the same time that it secures the Interests of the Crown, vizt. "That, instead of paying down the whole purchase price of Land within twelve months from the date of the Grant, it should be optional with the purchaser only to pay down, at the period of purchase or within twelve months thereafter, one half of the purchase Money, upon which he should receive the Title Deeds of his Land, made out in the same forms and holding of the Crown in fee simple by the annual payment of a Pepper Corn as Quit Rent in the same manner as if he had paid down the whole purchase price at once on his lodging with the Publick Officer, appointed for that purpose, a maiden Mortgage on the Land, so purchased, as a security to Government for the payment of the other half and bearing an annual interest of 5 per Cent. on the amount, such Mortgage to be at any time redeemable at the option of the Mortgagee by payment of the principal and Interest remaining due, and to be also transferable after 12 years in order to give Government the power to dispose of its interest in such Mortgage, if not redeemed within that period."

1827,
2 April.

Purchase
money to be
paid by
instalments.

An alteration of the original Instructions on this subject has recently been directed to be carried into effect (vide my dispatch of the 26 August, 1826), which is somewhat similar in principle to the plan here recommended. In addition to the allowance of 10 pr. Cent. discount on ready money payment, the purchaser is now permitted, after the first deposit of 10 per Cent. is paid down, to pay by Instalments at such intervals of time as may be agreed upon by the Governor. Bearing these Instructions in view, I see no objection to such further modifications, founded on the recommendation of the Land Board, as may appear to you desirable on this point.

There is only one point remaining to be noticed, namely, the suggestion of the Land Board that a competent publick Officer should be appointed for the special purpose of collecting the Land Revenue, a duty which it is stated has been hitherto performed by the Surveyor General in addition to his other occupations. Were the reasons, which are offered by the Land Board for relieving the Surveyor General from this duty, less conclusive than they are, I should conceive it quite necessary that such an appointment, as that which is now recommended, should take place on the ground of Mr. Oxley's other duties being sufficiently extensive

Collector of
land revenues
to be appointed.

1827.
2 April.

to occupy his undivided attention. I shall, therefore, take an early opportunity of sending out to the Colony a proper person to superintend the collection of the Quit Rents and all other monies accruing to the Publick from this particualar source of Revenue.

I have, &c.,

BATHURST.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch marked "Private," per ship *Manlius*; acknowledged by Governor Darling, 2nd August, 1828.)

My dear Sir,

Downing Street, 2d April, 1827.

Proposal to
make purchasers
and grantees
equal in all
respects.

In addition to my Dispatch of this date on the subject of Lands, and with reference to that part of it which relates to the distinction, enforced by the present Instructions, between the Grantee and the Purchaser, I think it necessary to advert to an opinion, which has been submitted to me, as to the expediency of doing away with all distinction whatever between the two parties, by placing them upon exactly the same footing both as to the quantity of Land, which they shall be allowed to obtain, and as to the value of the payments, which, whether in the shape of a Quit Rent or of a purchase price, they shall be called upon to make. In other words, that they should be equally entitled to apply for large Grants, subject to the rigorous Rules of Cultivation which may be imposed on all parties; that the discount for present payment on the part of the Purchaser should be in precise Arithmetical proportion to the advantage gained by the Grantee in not paying any Quit Rent for seven years; and, above all, that the price of the Land, fixed by the Surveyor General and by the Land Board, should not be merely a ready money price, but should be calculated with reference to the Seven years allowed to the Grantee, before he is called upon to pay 5 per Cent. upon the price,—the object of the whole system being that he is to create the value, which will enable him to pay the Rent. Thus, for example, if 8,000 Acres are valued by the Land Board at 5s. per Acre, with due consideration of the Seven years Law and with due consideration of the expence of making Roads (if it be deemed expedient to make that expence one of the elements of the price of Land), a Grantee at the end of seven years would be called upon to pay a Quit Rent of £100 per Annum, that is, 5 pr. Cent. upon £2,000, which Rent is redeemable at any moment on the payment of that £2,000. To put the Purchaser on an entire par with the Grantee, it is conceived that he ought to have such a discount allowed to him, as will reduce the amount of the payment to be made by him to the present value of £2,000 to be paid seven years hence.

I have deemed it advisable to advert to the above suggestions, altho' I am by no means prepared to pronounce on the propriety of introducing the very important alteration, to which it must lead, in the present system; at the same time, it is a question on which I shall be glad to receive your opinion after you shall have given the subject your fullest attention.

1827.
2 April.

It is evident that the proposition has emanated from the notion that the Settler, who is desirous of purchasing Land rather than of accepting a Grant from the Crown, is called upon to pay too dearly according to the present Instructions, for the indulgence of his taste, and that some concession in his favour should be introduced to place him more on a par with the Grantee. It is, on the other hand, as you will have perceived, my present impression that no additional facilities should be given to the sale of Lands in our Colonies, and that, in considering the relative situation of the Parties, the recent alteration, which has been made in the Regulations relative to the payment of the purchase Money, has not been sufficiently adverted to (an Indulgence which may fairly be considered as equivalent to the seven years freedom from Quit Rent, which is allowed to the Grantee); nor does it appear to have been sufficiently borne in mind that the Purchaser, having once made good his purchase, is relieved from all further payments by becoming the Possessor in fee simple of the Land, whilst the Grantee, unless he redeem at 20 years purchase, is bound to pay a perpetual Quit Rent. To explain this situation still further—The Settler, who purchases from that love of Property which is common to mankind, or in consequence of command of Capital, is called upon to advance a comparatively large Sum on the outset of his Colonial Career, and will, in the course of a certain number of years, be free from all future payments: whilst the Settler, who receives a Grant, is absolved from all payments for a certain number of years, but entails upon himself (unless he redeem his Quit-Rent) an annual payment in perpetuity hereafter.

Criticism of
proposed
change.

I remain, &c.,

BATHURST.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Australia.)

Sir,

Government House, 2nd April, 1827.

I have the honor to transmit to you, in reference to Your Letter of the 25th November, 1825, the accompanying Copy of a Letter, received from the Government of Van Diemen's Land, by which, it appears that Mr. Fidkin the object of your enquiry resides at present in Van Diemen's Land. I have, &c.,

Report re
J. Fidkin.

RA. DARLING.

1827.
2 April.

Report *re*
U. Fidkin.

[Enclosure.]

MR. J. BURNETT TO COLONIAL SECRETARY MACLEAY.

Sir, Colonial Secretary's Office, 20th March, 1827.

In acknowledging the receipt of Your letter of 31st January last, relative to Mr. Urban Fidkin, I am directed to express the Lieutenant Governor's regret that your former communication on the subject has remained unanswered.

The object of your enquiry resides at New Norfolk in this Island, where he appears to practise as a Law Agent.

I have, &c.,

J. BURNETT.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 30, per ship *Manlius*; acknowledged by Governor Darling, 1st November, 1827.)

4 April.

Sir, Downing Street, 4th April, 1827.

An assistant
surveyor to be
selected as
collector of
land revenue.

With reference to my Dispatch of the 2nd instant, in which I signified to you my Intention of sending out a person from England to undertake the duties of collecting the Land Revenue, I do myself the honor of acquainting you that, upon further consideration, I think it will be more desirable to select for this situation some officer, already resident in the Colony; and, as it appears to me that none would be better qualified than a person, who has been employed in the Surveyor General's Department, I am to desire that you will select from amongst the Assistant Surveyors one, whom you may consider, from his previous character and conduct, to be fitted to be entrusted with the particular duty in question, assigning to him such Salary as you may consider to be adequate to the present amount of Labour and responsibility, which will be imposed upon him.

I do not imagine that, for some time to come, this Labour and responsibility will be very considerable; although it is highly proper, as recommended by the Land Board, that the duty of collecting the Quit Rents, etc., and keeping the accounts of this Branch of Revenue, should devolve upon some responsible person, whose other occupations are not, as was the case under the former arrangement, incompatible with the performance of that Service.

I have, &c.,

BATHURST.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch marked "Private," per ship *Cambridge*; acknowledged by Governor Darling, 10th November, 1827.)

Dear Sir, Downing Street, 4th April, 1827.

Lord Bathurst has desired me to explain to you, with reference to his despatch of this day's date, respecting the

appointment of a Superintendent of Land Revenue from amongst the Assistant Surveyors, that he of course does not mean that you should take from that Department, for the purpose of placing him in the other situation, one of the most efficient of those persons; on the contrary, it has occurred to him that, by giving to you the opportunity of making this Appointment, you would be better able to provide for any one of them, who may be deficient in the requisite qualifications as a Surveyor, but who may be perfectly steady and competent to the duties of the other situation. It will not be proper, therefore, under these circumstances, to attach a higher Salary to the new Appointment, at least for the present, than may have been already received by the person, whose removal you may decide upon, or it would be regarded by the other parties in the light of a promotion, which those, who are conscious of possessing greater abilities, would justly complain of.

1827.
4 April.

Selection of
collector of
land revenue.

Mr. Govett, whom Lord Bathurst had intended, previously to the adoption of this arrangement, to appoint as a Supernumerary Surveyor and Draftsman, will now become a regular Assistant with the same Salary as those persons who have been lately sent out.

Promotion of
W. R. Govett.

I remain, &c.,

R. W. HAY.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Australia; acknowledged by under secretary Hay, 3rd November, 1827.)

Sir, Government House, 4th April, 1827.

Having communicated to the Chief Justice the arrangement directed by Your Letter, dated the 9th March, 1826, Marked Private, according to which his Salary should in future have been paid from the Colonial Treasury, he addressed a Letter to me, of which the enclosed is a Copy, considering that, under the Charter establishing the Supreme Court, he is entitled to receive his Salary as heretofore by a Bill on the Lords of the Treasury. I do myself the honor to acquaint you that I have in consequence drawn on their Lordships for the sum of £500, being the Amount of Mr. Forbes's Salary for the Quarter ended the 31st of March last.

Payment of
salary to
chief justice.

I beg to state that I shall continue to issue Mr. Forbes's Salary in the same manner, until I receive Instructions to the Contrary.

I have, &c.,

RA. DARLING.

1827.
4 April.

Payment of
salary to
chief justice.

[Enclosure.]

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

Sir,

Sydney, 3rd April, 1827.

I beg leave to remind Your Excellency that my Salary, as Chief Justice, became due on the 31st day of last Month, and I have further to request that Your Excellency will draw Bills in my favor on the Right Honble. the lords Commissioners of the Treasury for the quarter ending on that day, in pursuance of the fifth Section* of his Majesty's Charter establishing the Supreme Court.

I have, &c.,

F. FORBES, Chief Justice.

EARL BATHURST TO GOVERNOR DARLING.

(A circular despatch per ship Manlius.)

5 April.

Circular re
regulation of
trade.

Downing Street, 5 April, 1827.

[This despatch transmitted the draft of an order in council for regulating the trade of His Majesty's possessions within the limits of the East India company's charter, made in pursuance of the 73rd section of the statute, 6th Geo. 4, cap. 114. By this order, the regulations that were in force on the 1st of July, 1825, were continued in force; that is, the order in council† dated 12th July, 1820, was extended after its due date of expiration.]

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Manlius: acknowledged by Governor Darling, 16th August, 1827.)

Sir,

Downing Street, 5th April, 1827.

I have had the honor to receive and have laid before Earl Bathurst your letter of the 8th of September, accompanied by one addressed to his Lordship by the Revd. Mr. Marsden. In addressing this letter to Lord Bathurst, Mr. Marsden appears to have been anxious of proving to him that he had no participation in the cases of illegal punishment, inflicted on certain Prisoners, who had been brought before and convicted by the Bench of Magistrates at Parramatta, in consequence of which a Bill of Indemnity was passed by the Legislative Council in the month of October, 1825. Lord Bathurst, however, desires me to request that you will acquaint Mr. Marsden that the statement, which he has thought fit to make in this instance, has not removed from his Lordship's mind the impression, which was created by the first accounts, which reached His Majesty's Government of the transaction in question, and that his Lordship does not, therefore, think that the Letter, now received from Mr. Marsden, renders it necessary that he should make any further observations on the subject.

I have, &c.,

R. W. HAY.

Statement
by Revd. S.
Marsden
re illegal
punishments.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship *Manlius*; acknowledged by Governor Darling,
16th August, 1827.)

1827.
5 April.

My dear Sir,

Downing Street, 5th April, 1827.

I have had the pleasure of receiving your letter of the 18th September on the subject of Mr. Raymond, whose pretensions appear to be far beyond his Deserts. Lord Bathurst's dispatch of the 5th October last, in approving of the temporary provision which you had made for Mr. Raymond, explained to you the footing, upon which it was intended that he should be placed on his arrival in the Colony; to which, I will only add that it is by no means his Lordship's wish that you should employ Mr. Raymond in any situation, for which he may be unfit; and it must, therefore, be explained to him that his employment at all will depend upon his being satisfied with what may be done for him, and upon his making himself useful in whatever way the opportunity can be afforded to him of being so.

Instructions re
employment of
J. Raymond.

I remain, &c.,

R. W. HAY.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship *Manlius*; acknowledged by Governor Darling,
16th August, 1827.)

Sir,

Downing Street, 5th April, 1827.

I am directed by Earl Bathurst to transmit to you the accompanying Application from Mr. John Abbott, one of the Assistant Surveyors, whom his Lordship has lately engaged for the Service of New South Wales. This Gentleman's family being resident at Van Diemen's Land, he is naturally desirous of having his services transferred, if possible, to the latter Colony; to which arrangement Lord Bathurst entertains no objection in case any opportunity should occur hereafter for complying with his wishes on this subject, without inconvenience to the Department to which he has been first attached.

Application
from J. Abbott
for employment
in Tasmania.

I have, &c.,

R. W. HAY.

[Enclosure.]

MR. JOHN ABBOTT TO UNDER SECRETARY HAY.

Sir,

28 Essex Street, Strand, 3rd April, 1827

I beg leave to return my grateful thanks for being appointed Draftsman in the Surveyor General's Department in New South Wales. I am fully sensible of the kindness of Lord Bathurst, and of your personal kindness in allowing me to trouble you with so many applications as I have done on the

1827.
5 April.

Application
from J. Abbott
for employment
in Tasmania.

subject, and trust that the exertions I am making will enable me to prove myself worthy of the favor, which has been shewn me and an effective and useful Officer in the Department, to which I am attached.

I hope I shall not be deemed presumptuous or unmindful of your goodness in stating that my family and friends (together with the little property I possess, consisting of a small flock of sheep) are all in Van Diemen's Land, where also I possess considerable knowledge of the interior of the Country, having been in the habit of repeatedly frequenting the uninhabited parts of the Island and of accompanying Mr. Scott, the present Surveyor General, in his excursions up the Country.

Under these circumstances, a transfer of me to Van Diemen's Land at the earliest opportunity that might occur would increase the value of the office to myself, by the advantage I should possess of residing with my family, when not engaged in district service, and would enable me to preserve my little property, which I must otherwise part with at a loss; and I flatter myself also that my knowledge of the Country would enable me to render myself more useful.

I have, &c.,

JOHN ABBOTT.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 46, per ship Australia; acknowledged by right hon. W. Huskisson, 7th November, 1827.)

My Lord,

Government House, 5th April, 1827.

Abstract of
lands alienated
by Sir T.
Brisbane.

I have the honor to transmit, for Your Lordship's Information, an Abstract of Crown Lands, disposed of during Sir Thomas Brisbane's Administration, and included in the general Warrants, issued by him previous to his retiring from the Government. The Abstract further specifies the several conditions of Sale, and the Number of Acres sold under each.

Orders for land
given by
Sir T. Brisbane.

In addition to these, several other persons have produced Sir Thomas Brisbane's Orders for Land, which were not included in any Warrant; but the Executive Council, to whom I submitted the question generally, recommended that the whole should be confirmed, which indeed could not have been avoided without a breach of faith on the part of Government.

The Claims for Lands *without purchase* under the order of Sir Thomas Brisbane have also been admitted. The Conditions with respect to the Quit Rent are the same as those which at present exist. And the Parties were necessarily permitted to take possession without waiting until the Lands had been put up to Sale. In the case of *original* Grants, this will be of little Consequence,

as it is to be hoped the Lands will be surveyed and Valued before the expiration of the Seven Years, when the Quit Rent becomes due; and it is presumed it will be sufficient, if the Parties pay Quit Rent on the Valuation, which may be fixed by the Commissioners.

1827.
5 April.

With respect to *additional* Grants without purchase, on which the Quit Rent is payable at the end of the first Year, I have required that Persons, who received Orders for such Grants, shall pay a Rent of 20s. per 100 acres, as an equivalent for the Quit Rent, until their Lands can be valued. This is in fact putting the Grants, made by Sir Thomas Brisbane without purchase, on the same footing, as those made at present; and I am not aware, after the best Consideration I am capable of giving the Subject, that, under the circumstances of the case, any more just or convenient mode could be adopted.

Rent to be paid
on additional
grants until
valued.

I have, &c.,

RA. DARLING.

[Enclosure.]

ABSTRACT of the number of Acres, for which Warrants have been issued for the Purchase of Crown Lands, and the Tenures under which they were granted.

Abstract of
lands alienated
by Sir T.
Brisbane.

Conditions of Purchase.				Remarks.
5s. per Acre, 10 per Cent. deposit and the remainder in 3 years.	7s. 6d. per Acre, 10 per Cent. deposit and the remainder in 3 years.	Lease for 3 years at 15s. per 100 Acres, previous to deposit of 10 per Cent.	Regulations of the 18th of May, 1825, which are the same as laid down in the King's Instructions of the 17th July, 1825.	
263,860 Acres.	2,250 Acres.	46,000 Acres.	46,000 Acres.	Total 358,110 Acres

GOVERNOR DARLING TO SECRETARY HARRISON.

(Despatch per ship Australia.)

Sir,

5th April, 1827.

I have the honor to report, for the information of the Lords Commissioners of His Majesty's Treasury, that, independent of the £10,000 in British Coin, which I left at Van Diemen's Land on my coming out to assume the charge of this Government at the end of the year 1825, I have caused the following Sums to be forwarded from hence for the use of that Government, Vizt.

Specie provided
for use in
Tasmania.

In British Coin £5,500; 20,608 Spanish Dollars at 4/4 each
£4,465 1s. 4d.; £9,965 1s. 4d.

I have, &c.,

RA. DARLING.

1827.
6 April.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 31, per ship *Manlius*; acknowledged by Governor Darling, -1st December, 1827.)

Sir,

Downing Street, 6th April, 1827.

W. R. Govett
to be assist.
surveyor.

I do myself the honor of acquainting you that, in addition to the persons whom I have already signified to you my Intention of appointing Assistant Surveyors at New South Wales, I have nominated Mr. William Romaine Govett to fill a similar appointment, at the same rate of Salary, which has been assigned to the others, vizt. Two Hundred Pounds per Annum.

I have, &c.,
BATHURST.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship *Manlius*; acknowledged by Governor Darling, 16th August, 1827.)

Sir,

Downing Street, 6th April, 1827.

Application
from W. Cape
for increase
of salary.

I am directed by Earl Bathurst to transmit, for your information and report, the inclosed Application for an increase of Salary from Mr. William Cape, who appears to fill the situation of Head Master of the Sydney Public School under an appointment from Sir Thomas Brisbane; and I am to request that you will inform the Writer that his letter has been thus referred to you, and that it ought to have been presented to His Majesty's Government through the same channel in the first instance.

I have, &c.,
R. W. HAY.

[Enclosure.]

MR. WILLIAM CAPE TO EARL BATHURST.

My Lord,

Sydney Public School, 29th July, 1826.

Having had the honor of being appointed Head Master of this School in April, 1824, by Sir Thomas Brisbane, late Governor of this Territory, subject to His Most Gracious Majesty's pleasure, I now most humbly solicit that boon through your Lordship's special favor, and shall feel greatly obliged by my appointment from Home direct, with a competent Salary to subsist upon; assisted by my three sons and Daughter, I have instructed 320 Pupils to read, write and cypher on Dr. Bell's system; my present salary is £100 per Annum and House Rent, which are inadequate to the fatiguing task and the support of my large Family; should your Lordship require testimonials as to my character and exertions as Master, I beg to refer to my Honorable Friend, Major Goulburn, late Colonial Secretary now in England. I am a Freeman and Liveryman of the City of

London, and have for the last twenty years invariably given my vote to those Members, who I considered would give their best support to His Majesty's Ministers; to confirm this their acknowledgments of the last instance are enclosed. I emigrated with my family (10 in number) to these shores, but was most singularly thwarted in my designs of taking up Grants of Land by two extensive Robberies of my Property before my arrival, and by the infamous conduct of the Captains, with whom we sailed, by the damage of our Goods and ill treatment to ourselves (without redress) also the consequent Insanity of my Wife. My Capital of £2,000 had considerably diminished, when this situation presented itself, with prospects the most flattering to my Family: they, I trust, will eventually prove substantial; to advance which in one respect the honor of my appointment from Home will essentially contribute when be assured, my Lord, my gratitude shall become apparent by renewed exertions to establish in the Native Youth the true principles not only of Morality and Religion, but Loyalty and attachment to their Sovereign and Parent Country.

I have, &c.,

WM. CAPE.

[Sub-enclosures.]

[These were three letters, dated in February and March, 1820, from Thomas Wilson, George Bridges, and W. D. Dunn, with reference to elections at the Guildhall, London.]

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Per ship Marquis of Hastings.)

My dear Sir,

Downing Street, 6th April, 1827.

Mr. Baxter, the new Attorney General for New South Wales, will have the honor of delivering this letter to you; and I have the greater pleasure in giving him this Introduction, as in addition to his being an acquisition to the general Society of the Colony, I feel assured that you will find him a very zealous and Intelligent person in all matters, connected with his professional duties.

I have, &c.,

R. W. HAY.

Introduction of
A. M. Baxter.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch marked "Separate," per ship Australia: acknowledged by right hon. W. Huskisson, 20th January, 1828.)

My Lord,

Government House, 6th April, 1827.

In reference to my Despatch, No. 15, of the present Year, transmitting the reports of Captain Wetherall of His Majesty's Ship Fly, and Captain Wright of the Buffs, of the observations

1827.
6 April.

Report by
W. H. Hovell
on Western
port.

Disadvantages
of Western
port for
settlement.

they had made during the Service, on which they were employed at Western Port, I have now the honor to enclose Copy of a Report, addressed to me by Mr. Hovell, the person mentioned in my Despatch above referred to.

I have forwarded this Report rather with a view of putting Your Lordship in possession of the whole of the information, I have collected respecting Western Port, than from any idea of the importance of the information. The Searcity of Water throughout the Country renders the Land unavailable to any extent for the purposes either of grazing or Agriculture; and the difficulty of access to the Shore from the Mud flats, which appear to extend round the Margin of the Port, must prevent its ever becoming a place of Trade, though, if the interior of the Country were open, it might be used as a Means of facilitating the Communication between this Colony and Van Diemen's Land. It would, in fact, appear from the Reports, which have been received, that the statement of Mr. Oxley, which accompanied my Despatch No. 77 of last Year, though drawn up from recollection after a lapse of twenty Years, was substantially correct; and that Western Port does not possess the necessary requisites for a Settlement. I have not found any disposition, on the part of the Inhabitants, to Settle that part of the Country, which, should Your Lordship consider that the object of taking formal possession of it has been answered, might be a sufficient reason for withdrawing the Persons sent to establish the Settlement.

I have, &c.,

RA. DARLING.

[Enclosure.]

[A copy of the report by W. H. Hovell, dated 27th March, 1827, will be found in a volume in series III.]

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 47, per ship Australia: acknowledged by right hon. W. Huskisson, 9th November, 1827.)

7 April.

Appointment
of collector of
internal
revenue.

My Lord,

Government House, 7th April, 1827.

I have the honor to acquaint Your Lordship that the great increase of business in the Surveyor General's and other Departments has rendered it necessary to appoint an Officer to the Situation of "Collector of the Internal Revenue."

The Quit Rents and Monies paid for the Land purchased from the Government have hitherto been Collected by a Clerk in the

Office of the Surveyor General; and my attention was first directed to this Circumstance by the Land Board, who pointed out, in their Report transmitted with my Despatch, No. 43 of last Year, the impropriety of these Collections being made in that Office. It was evident that the Surveyor General should rather be a Check on the Collections than the person to collect; and the impropriety of his or any of his Department receiving the Money, paid for land, which they were to measure and parcel out to Individuals, appeared to be so obvious, that I did not hesitate, as soon as I had the means of placing this duty in other hands, to relieve the Surveyor General from the charge. I should observe that the increase of business, which must in a short time be occasioned by the Renting of Land and the other arrangements, which are in progress, would have rendered it inconvenient for the Surveyor General to attend to the Collection of the Monies. In addition to which, it appeared desirable, as a means of furnishing a Necessary Check, to place the Collection of such other Monies, as are receivable by the Government (and these are Numerous) in other hands than the Treasurer; and this has been accomplished by transferring it to the Collector of the Internal Revenue; so that now the Accounts of each Department will be a Check on the other, and the duty of the Treasurer will be simply to receive the Monies, collected by the Collectors of Customs and Internal Revenue, and to make the necessary issues under the Governor's Warrant.

1827.
7 April.
Reasons for
making
appointment.

I now beg leave to recommend for Your Lordship's Confirmation the Appointment of Mr. Thomas de la Condamine to be Collector of the Internal Revenue with a Salary of £500 a Year. Mr. Condamine came out as my Aid de Camp, and has acted since my arrival without Pay as Military Secretary. He completed his Education at the Royal Military College, and has been ten Years in the Staff Corps. In mentioning him to Your Lordship, as a person in whose success I am particularly interested, I beg to assure Your Lordship that he is a Gent'n of distinguished Merit, and who has already proved himself a most valuable Member of this Government. In proof of this, I need only instance the present admirable State of the "Carters Barracks," which is entirely owing to his exertions and unwearied Superintendence. In this Establishment, there are *Eighty* Boys Educating and under Instruction for the different Trades. There are besides two Tread Mills for the punishment of Delinquents, and the Horses and Carts employed in the Several public Departments are kept here. He is also one of the most Active Members of the Managing Committee for the Conduet of the

T. de la
Condamine
appointed
collector.

Testimony in
his favour.

1827.
7 April.
Testimony in
his favour.

"Female Factory"; and, when the arrangements now in progress are completed, I am satisfied the improvements in that Establishment, which have been principally suggested by him, will be important. In alluding to his Services at the Carters Barracks and the Factory, I should observe that they are gratuitous as those have been, which he has rendered as Military Secretary.

I have, &c.,

RA. DARLING.

EARL BATHURST TO GOVERNOR DARLING.

(Despatch No. 32, per ship Cambridge; acknowledged by Governor Darling, 11th December, 1827.)

8 April.
Abolition of
office of
lieut.-governor.

Sir,

Downing Street, 8th April, 1827.

Member
of council
appointed.

His Majesty having been graciously pleased to direct that the Office of Lieutenant Governor should be discontinued on the departure of Colonel Stewart with his Regiment to the East Indies, and that the Salary and Emoluments of the same should be saved to the public, I do myself the honor of inclosing a Warrant under the Royal Sign Manual, in which you will perceive that "the Officer, next in command to the Commander of the Forces," is appointed a Member of the Council, instead of the Lieutenant Governor.

Cessation of
commission to
W. Stewart.

The Commission, held by Colonel Stewart, will of course cease to have any effect from the moment of that Officer's departure; but, should any circumstances occur to detain him in the Colony, you will signify to him that His Majesty has been pleased to revoke the same.

I have, &c.,

BATHURST.

[Enclosure.]

[This warrant was similar to that dated 17th July, 1825 (see page 22, volume XII), subject to the necessary alteration in the revocation of the preceding warrant and the alteration as mentioned in the despatch. It was dated 7th April, 1827.]

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 48, per ship Australia; acknowledged by right hon. W. Huskisson, 31st March, 1828.)

My Lord,

Government House, 8th April, 1827.

Applications
for revision
of salaries.

The Officers of the Civil Hospital and other Departments, whose Salaries have remained as they were originally fixed several Years since, conceiving they had a Claim to be placed on

a footing with those of more recent appointment, applied to me, soon after my arrival, to the above effect. Considering their application reasonable, I was desirous of availing myself of the Opinion of such Officers of the Government as, from their information and experience, appeared the most Competent to Judge of the matter; and I accordingly appointed the Lieut. Governor, the Colonial Secretary and the Auditor, instructing them to prepare a Scale of Salaries for the Officers and other Persons, above alluded to, having reference to the duties and comparative situation of each with those of other Departments.

1827.
8 April.

Applications
for revision
of salaries.

I have before informed Your Lordship that it had been the practice here to augment the Income of Individuals, more particularly of the subordinate Situations, by allowances of various kinds, such as Rations for themselves and Families, Servants Victualled from the public Stores, the issue of Slops, Clothing, etc. I, therefore, laid it down, as a principle in the Instructions given to the Board that, in the new Arrangement, No *free* Person should receive any allowance in addition to his Salary except that of Forage for Horses, when necessary to the performance of his duty, with a House or Allowance for Lodgings, and this in such Cases only as had been directed by Your Lordship.

Allowances
to officials.

I have now gone through the Report with every possible Care and attention; and I persuade myself Your Lordship will be satisfied that the Alterations proposed in the Salaries are just and reasonable, and such as the Individuals, from the nature of their Situations and the Expence of living in this Country, have a fair Claim to. I must for my own part disclaim any desire to add unnecessarily to the Expenses of the Government. I feel, at the same time, it is highly important to the welfare of the Colony that the Income of the Several Officers should be such as to induce Men of Character and talent to accept appointments. This principle appears to have been acted upon in the Cases of the Appointments recently made at Home; and the justice of extending it to those of Older date will not, I am satisfied, be disputed.

Approval
of report
submitted.

It will be observed that *Fees* are to be retained by the Individuals only in two cases, Coroners and Superintendent of Dawes' Battery, and that fixed Salaries have been generally proposed in lieu. I have annexed to the Report such observations as appears to me may be useful in judging of the several cases; and it will be seen that I have recommended a different rate of Salary for the Surgeons and other Officers of the Hospital Department to that proposed by the Board.

Fees to be
retained by
coroners and
supt. of
Dawes battery.

1827.
8 April.

Abstract of
salaries.

I do myself the honor to enclose an Abstract of the Salaries, as proposed under the present arrangement, with Notes in the Margin, which afford the means of easy reference to the Report. But I have not thought it necessary to burthen this Communication, which is already so voluminous, with a Comparative Statement of the Old and New Salaries.

I beg I may receive Your Lordship's Commands on this Subject, as soon as the matter is determined, it being of some importance to the Settlement of the public Accounts; and I take the liberty to recommend that the New Salaries may be issued from the Commencement of the present Year, as I have found it necessary to authorise the issue of many, on Account, to several of the Individuals.

I have, &c.,

RA. DARLING.

[Enclosures Nos. 1, 2, and 3.]

[These were:—

Governor Darling's minute to the colonial secretary, numbered 159 and dated 21st November, 1826.

Report by board on salaries, dated 6th March, 1827.

Abstract of proposed salaries.

Copies of these voluminous departmental papers will be found in a volume in series II.]

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 49. per ship Australia; acknowledged by right hon. W. Huskisson, 8th November, 1827.)

9 April.

Leave granted
to F. N. Rossi
on full pay.

My Lord,

Government House, 9th April, 1827.

Captain Rossi having been under the necessity of retiring to the Country on account of his Health, which had suffered from the laborious nature of his duties as Principal Superintendent of Police, it appeared to me a reasonable indulgence to permit him to retain his full Salary; and I consequently directed that the remuneration to the Person, who acted during his absence, should be paid from the Treasury. The Allowance, which I fixed, corresponds with the rate established by the Lords of the Treasury; but, as I was not aware, until I received their Lordships' Instructions, which have since come to hand, that the person Acting was to be remunerated from the Salary of the Principal, I trust your Lordship will be pleased to sanction the issue, which has been made in this case, amounting to £56 14s.

Payment of
substitute.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 50, per ship Australia; acknowledged by right hon. W. Huskisson, 4th November, 1827.)

1827.
10 April.

My Lord, Government House, 10th April, 1827.

I have the honor to acquaint your Lordship that Captain Piper, the Naval Officer, having been unable to pay in the Balance* due by him on the public Account, I have found it necessary to suspend him from his Office, and have appointed Mr. John Thomas Campbell to the charge of the Department under the Commission of Collector of the Customs, which I had the honor to receive with Your Lordship's Circular Letter of the 1st of January, 1826. Not feeling satisfied with Captain Piper's Conduct, I had delayed giving him the Commission of Collector, and appointed a Board, early in the Month of October last, to enquire into the Mode of Conducting the duties of that Department; but, before the Report was delivered in, which I received only about ten days since, Captain Piper became a Defaulter and was consequently removed from his Office. Since this occurrence, the Sum of *Five Thousand Pounds Sterling* has been paid in on his account, but there still remain a Balance of about *Twelve Thousand Pounds*. His Property is, however, fully sufficient to meet this demand; and the necessary Steps have been taken to secure the Government from loss. I fear, however, from the extreme negligence with which Captain Piper appears to have carried on the business of his Department, that the Duties have not been properly collected, and there are unluckily no means of ascertaining the extent of the deficiency.

According to the late regulations, the public Accountants were required to make their payments to the Treasurer Quarterly. But, though infinite trouble was experienced last Year in obliging Captain Piper to pay up a large Balance, which he owed to the Government when I arrived, and which he was only enabled to do by disposing of Lands and other property, the necessary attention was not paid to the regular delivery of his Accounts, and the present Debt has been accumulating since the termination of the third Quarter of the last Year. His Accounts were very improperly permitted to lay over from that time under various pretences on his part, until it became necessary to Act on the Instructions recently received from the Lords Commissioners of the Treasury; and it then appeared that Captain Piper was unable to pay in his Balance.

As the Omission in this case applies more immediately to the Auditor, I am desirous to explain that he has been Constantly

Suspension of
J. Piper.

J. T. Campbell
appointed
collector of
customs.

Board of
inquiry on
department of
naval officer.

Balance due
by J. Piper.

Payments
made by
J. Piper.

* Note 62.

1827.
10 April.

occupied in assisting in the general Arrangements of the Government, and, though he ought not to have neglected a duty which was of paramount importance, it is some excuse that he was Zealously and advantageously employed in the Public Service.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch marked "Separate," per ship Australia; acknowledged by right hon. W. Huskisson, 4th November, 1827.)

My Lord,

New South Wales, 10th April, 1827.

Appointment of
J. T. Campbell
as collector
of customs.

1st. I have the honor to inform Your Lordship, in reference to my Despatch No. 50 of this date, that, in appointing Mr. John Thomas Campbell to the Situation of Collector of Customs, I have been influenced by the opinion which is generally entertained of his integrity.

W. Stewart
proposed as
collector.

The practices, which have prevailed in Consequence of the inattention and misconduct of Captain Piper, have rendered it necessary to be particular in employing such Persons as, from their Character and Principles, would be likely to Correct the Abuses, which have existed. Mr. Campbell was Secretary to Governor Macquarie, and is in fact but little known to me. My wish was to have nominated Colonel Stewart, could it have been arranged at the time; and he would now willingly retire from the Military Service if appointed to the situation of Collector.

Appointment of
F. N. Rossi as
controller;

He is quite a Man of business, and particularly conversant in all the details of Official Arrangements; and I am satisfied would prove extremely useful in organizing the Customs Department.

2nd. I have taken the opportunity of removing Captain Rossi to the situation of Comptroller, and I beg to recommend the Confirmation of his Appointment to Your Lordship. He has evinced every possible Zeal in the discharge of his duty as Principal Superintendent of Police, but his Health has proved unequal to the Continued exertion, which is indispensable in that Officer.

and of
A. P. Onslow
as searcher.

The duties of Comptroller are less laborious, and do not require so much Activity; and I have no doubt he will acquit himself in that Situation in a very satisfactory manner.

3rd. I have selected Mr. Onslow for the Searchership, though unknown to me 'till lately, having come from India on account of his Health. He is a Young Man of Character and good Principles, a description of Person much required here. He is besides a person of no inconsiderable Attainment, and will prove an Acquisition to the Service. I, therefore, trust his Appointment will meet with your Lordship's Approbation.

4th. It now only remains for me to mention Mr. North, whom I have nominated to the Charge of the Bonded Store. The abuses in this Branch have been to a great extent, and I have been anxious to obtain the Services of a Person whose integrity could be depended on.

1827.
10 April.

S. North
appointed to
charge of
bonded store.

Mr. North is a Lieutenant in the Veteran Companies, is a Man of Business and an excellent private Character. I, therefore, recommend him to Your Lordship as a Person deserving the situation to which he has been Appointed.

5th. I beg to acquaint Your Lordship that I have provided for the temporary succession to the Appointment of Principal Superintendent of Police, intending to keep that situation open for Lieut't Colonel Morrisett, whom your Lordship has pointed out to me as a Person well qualified to fill it. I had, on a former occasion, intimated my intention of disposing otherwise of Lieut't Col. Morrisett; but, as the tranquillity of the Town of Sydney, which is an object of much importance, depends in a great degree on the exertions and Character of the Superintendent of Police, I shall be very glad to avail myself of the Services of an Individual, who appears so well qualified for the Situation.

J. T. Morisset to
be superintend-
ent of police.

In submitting these Appointments for Confirmation to Your Lordship, it will be observed I have not been influenced by any private feeling; some of the Individuals are almost totally unknown to me. I have been desirous only of obtaining fit and proper Persons for the several situations, and cannot, therefore, be interested in their Confirmation further than the attainment of this object, which is of the first importance here.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 51, per ship Australia; acknowledged by right hon. W. Huskisson, 4th November, 1827.)

My Lord,

Government House, 11th April, 1827.

11 April.

I have the honor to transmit to Your Lordship the Report of a Board, which I appointed in the Month of October last to enquire into the mode of conducting the Department of the Naval Officer, it having appeared to me that the Establishment was inefficient, and that Captain Piper did not pay that attention to his duty, which the interests of the Public required.

Report of board
on department
of naval officer.

My Despatch, No. 50, which I have the honor to forward by this opportunity, will inform Your Lordship that, previous to the receipt of the enclosed Report, I had found it necessary to suspend Captain Piper in consequence of his having failed to

1827.
11 April.

pay in the Money due by him on the public Account. It will, therefore, be unnecessary to take up Your Lordship's time with any observations on the irregularity and reprehensible nature of Captain Piper's proceedings.

Reforms
required in
department.

One of my objects, indeed the principal one, was to ascertain the defects of the existing System and the best means of correcting them. The Board was consequently instructed to report on these points. And Your Lordship will perceive they have paid much attention to the discharge of the duties imposed on them, though it is to be regretted they were not able to send in their Report at an earlier period.

Establishment
of custom
house.

Having pointed out the insufficiency of the Naval Officer's Department, the Board has recommended the establishment of a Custom House; and, concurring as I do in the expediency of the measure with a view to the due Regulation of the Trade of the Colony and the proper Collection of that Branch of the Revenue, which I have no doubt under the proposed system will be considerably augmented, I have not hesitated to make the following Appointments, until Your Lordship's pleasure shall be known, and have authorised the issue of the Salaries, stated opposite the Names of the respective Individuals, vizt.

Staff
appointed.

John T. Campbell, Esqr., Collector	£1,200	0	0
Francis Rossi, Esqr., Comptroller	800	0	0
A. P. Onslow, Esqr., Surveyor and Searcher	400	0	0
Samuel North, Esqr., Keeper of the Bonded Store	400	0	0

I have not yet been able to find Persons eligible for the more Subordinate Situations, but I hope to be so in a short time.

Salaries
proposed.

Your Lordship will observe that the Salaries are fixed on a Moderate Scale with reference to the importance of the respective Situations. The per Centage or Commission, which the Naval Officer was allowed, as will be seen by the Report, exceeded £2,500 a Year the last two Years, whereas the Salaries of the whole Establishment, as proposed, consisting of Twelve Persons, amounts only to the Sum of £4,150.

Commission
and fees to
defray expense.

The Commission to the Naval Officer and the Fees hitherto received by the Wharfingers, which will now be placed to the credit of the Public, will nearly meet the expence of the New Establishment. But, independent of this, the increased Amount of the Revenue will of itself, I confidently anticipate, under the New Arrangement amply provide for and justify this Establishment.

I have not yet been enabled to give any attention to the Regulations proposed by the Board; but I have referred to the Acting Attorney General to ascertain in what cases it will be necessary to have recourse to the Legislative Council. Neither has it been

in my power to determine as to the expediency of the Alterations proposed in the nature and rate of certain Duties now levied, as recommended by the Board, though on a Cursory view of the Subject they appear judicious and advisable.

1827.
11 April.

It may be satisfactory to Your Lordship to be informed that, in forming the Board, whose proceedings are now submitted for Your Lordship's consideration, I deemed it advisable to avail Myself of the Assistance of two of the principal Merchants of the Colony, Mr. Wollstonecraft and Mr. Jones, as, from their information and influence (the former being Chairman of the Chamber of Commerce), the Board would derive much useful Assistance, and the public would be the better satisfied with any measures, which it might be thought expedient to adopt. Mr. Wollstonecraft, however, soon withdrew, the "Australian" News Paper having exerted itself to detach from the Government the independent Members by ridiculing the proceedings, which Mr. Wollstonecraft had not sufficient Character to resist. Mr. Jones continued to attend the Board, and is still assisting in some further enquiries, which will be necessary to the final Completion of the Arrangement. When these are concluded, I shall do Myself the honor to Communicate the result for Your Lordship's Consideration.

Merchants
appointed on
board of
inquiry.

I have, &c.,

RA. DARLING.

[Enclosure.]

[A copy of this voluminous departmental report, dated 2nd April, 1827, and signed by A. Macleay, R. Jones, W. Lithgow, and H. G. Douglass, will be found in a volume in series II.]

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 52, per ship Australia; acknowledged by right hon. W. Huskisson, 30th April, 1828.)

My Lord,

Government House, 12th April, 1827.

12 April.

The public Business is increasing to such an extent that I have been under the necessity of separating the Office of Accompts, which is a Military Appointment, from that of Colonial Auditor, and placing the two in distinct hands.

Separation of
office of
accounts from
colonial
auditor.

The fact is that no Steps had been taken, previous to my arrival, to establish regulations for the Conduct of any of the Departments, either Civil or Military; and the trouble in endeavouring to correct the evils, which existed, has been commensurate with the confusion and disorder which prevailed.

It is only justice to Mr. Lithgow, the Auditor, to inform Your Lordship that he has been indefatigable, and has afforded me

1827.
12 April.

Duties of the
auditor.

every possible Assistance in preparing the general Arrangements. But the duties of the Auditor in a Government like this, where a New System of Accounts is to be established under the Instructions of the Lords of the Treasury, which have been recently received, are as much as any person, however Zealous, can properly discharge. By attempting too much, something must be neglected, which has in effect been experienced; and the only remedy is to make a more just distribution of the business, which I find will be best accomplished by separating the Civil and the Military Branches of this Department.

Salary
proposed for
W. Lithgow.

Mr. Lithgow holds the Appointment of Assistant Commissary General of Accompts, and has filled the Situation here and at the Mauritius for several Years past. The Pay and Allowances of this Appointment Amount to £442 3s. 9d. a year, in addition to which he has received £100 a year as Colonial Auditor. This latter Sum appears to have been fixed by Sir Thomas Brisbane without any reference either to the Duties or rank of the Station in the Scale of the Officers of the Colonial Government. I, therefore, beg leave to submit to Your Lordship, as Mr. Lithgow must relinquish his Military Appointment, that he be allowed a Salary of £800 a Year as Auditor of Colonial Accompts, instead of the double Salary, which he at present receives of £542 3s. 9d.

In proposing this Salary, I presume to think Your Lordship will not consider it larger than is consistent with reference to other Situations. There is perhaps hardly an Office of more real importance under the Government. At the Mauritius, the Auditor ranks next to the Colonial Secretary. Here several Officers are paid at a much higher rate than the Auditor will be by the Salary, I have proposed for that Officer. As to Zeal, I can assure Your Lordship from long experience that no one has a Stronger claim than Mr. Lithgow, or can be better qualified for the Situation. He is besides an old Officer of the Government.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO SECRETARY HARRISON.

(Despatch per ship Australia.)

Sir,

12th April, 1827.

I have the honor to transmit, for the information of My Lords Commissioners, the Extract of a Despatch, which I have addressed to Earl Bathurst, with a view of explaining the grounds on which I have felt it necessary to separate the Office of Auditor of Colonial Accounts from that of the Account Branch of the Commissariat Department.

Separation
of office of
accounts from
colonial
auditor.

As Mr. Lithgow's Services are important to the Colonial Government in the Situation of Auditor, I trust My Lords Commissioners will not object to his being exclusively employed as such, and being placed on the Half Pay List, though it is presumed the Amount of his Salary as Auditor will preclude him from drawing his Half Pay as Assistant Commissary General.

1827.
12 April.

W. Lithgow
to be placed
on half pay.

I had proposed appointing Deputy Assistant Commissary General Ryrie to take charge of the Military Accounts; but, as he is desirous of retiring from the Service, I shall appoint one of the other Deputy Assistants to carry on this branch of the Service, until a Competent Officer can be sent from Home, which I request may be done by an early Opportunity.

Charge of
military
accounts.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 53, per ship Australia; acknowledged by right hon. W. Huskisson, 5th November, 1827.)

My Lord, Government House, 14th April, 1827.

14 April.

I have the honor to acquaint Your Lordship, in reference to my Despatch No. 47/1826, Paragraph 2nd, relative to the Claims of Lieut. Percy Simpson as Commandant of Wellington Valley, that, having again referred the case to the Executive Council, the Council recommended that, in order to avoid any further difficulty with respect to Lieut. Simpson, he should be paid at the rate of £300 a Year, the same as other Commandants, which has accordingly been done, and which I hope Your Lordship will be pleased to approve of.

Fixed salary for
P. Simpson.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch marked "Private and Confidential," per ship Australia.)

My Dear Sir, Government House, 15th April, 1827.

15 April.

I should not have troubled you with my Despatch, marked "Separate" of this date,* on the subject of the Land, ordered by Sir Thomas Brisbane to be reserved for Mr. Forbes's Mother, if he were not in the habit of stating that he has never received any indulgences from Government. He has published in the Papers that he is in possession of only 20 Acres of Land, as will be seen by the enclosed Extract from the Monitor of the 17th February last, though he has actually received above 10,000 acres, and he holds an order for 2,560 more.

Statements
made by
F. Forbes
re his land.

It will be perceived, by the enclosed Extract of a Letter, which he wrote to me in August last on the subject of the Reserve, that the 10,000 Acres is evidently for himself, though

* Note 63.

1827.
15 April.

Statements
made by
F. Forbes
re his land.

nominally solicited on account of his mother, that is, he would wish it to be considered as in lieu of some Land, which he states he has made over to his Mother for *her life*. But, even if this be the case, he will at her death retain the Land, which the Surveyor General informs me has been measured to him, and which he actually occupies at this moment; so that, at present and for some time past, he has been in possession of the Land at Bermuda, and the 10,000 Acres here, without having taken any step towards the exchange.

I have no desire to dispute Mr. Forbes's claim to indulgence, in common with the other Officers of the Government; but there is a want of candour and no little management in his endeavour to make it appear he has received no Land, in order no doubt that the possession of the reserve may not interfere with any further Claims, he may have it in contemplation to bring forward. But, supposing the Reserve to have been obtained, as he wishes it to be understood, in lieu of Land to be given up at Bermuda, no means have been afforded of judging of the quantity and value of that Land, which he is desirous of exchanging for 10,000 Acres of one of the finest and most beautiful Tracts in the Colony.* I have never felt any desire to interfere, with respect to this Reserve; but, when Mr. Forbes has taken so much pains to convince the Public of his disinterestedness, and that he has not shared in the indulgences of Government, *Twenty Acres*, as stated by the Monitor, *not being a very unreasonable portion at the end of three years residence in the Colony*, it is right, although the Public may be deceived, that Government should be in possession of the Fact. I remain, &c.,

RA. DARLING.

[Enclosure No. 1.]

Statement
in *Monitor*
newspaper re
land possessed
by F. Forbes.

EXTRACT from the Monitor Newspaper, Dated 17th February, 1827.

"We stated in our last that large Grants of Land had been promised or reserved for certain Officers of high rank, and, among the rest, the Chief Justice. We made such a Statement because we knew the same would go home to Ministers and Members of Parliament, but not perhaps coupled with such sort of remarks, as we considered it our Duty to affix to the said Statement. We have since been given to understand that, with respect to Mr. Forbes, the real circumstances as to his land are these. When he arrived in the Colony, Sir Thomas Brisbane offered him a Grant of Land, which he declined, probably from a feeling that it was inconsistent with the independence of his Office to incur obligation to the Governor. The King, however, having been pleased to instruct General Darling to Grant Lands to the Civil Officers, according to the practice, which was obtained before Mr. Bigge favored the Colony with his labors and their happy results, the Chief Justice obtained an Order for two thousand five hundred Acres upon the same terms and in the same manner as any other Civil Officer, conceiving such to be his right, as it unquestionably was, and not a favor, as it might have been considered in the late Governor's time. Sir Thomas, we have heard, did set apart a portion of Land at Hunter's River on account of Mrs. Forbes of the Island of Bermuda, the Mother of the Chief Justice, it being that Lady's intention to join the Justice's Family in New South Wales; and she wished, previous to her embarkation for this part of the world, to exchange her Estate in Bermuda for an adequate value in Land in this Colony. It was this circumstance probably, which led to the report, which appeared in our Monitor of Saturday last. As matter of fact, the Chief Justice, at this moment, is in possession of the "*swinging*" quantity of 20 Acres of Land, not a very unreasonable portion at the end of three Years residence in the Colony."

* Note 64.

[Enclosure No. 2.]

1827.
15 April.

EXTRACT of a Private Letter, addressed to Lieut. General Darling
by His Honor the Chief Justice, Dated 29th Augt., 1826.

"I BEG leave to enclose four Documents, which will explain the exact nature of the Land, adjoining my brother's grant at Hunter's River, which has been reserved for my Mother, in the event of her obtaining Lord Bathurst's sanction to an exchange of Land at Bermuda. I have no interest whatever in that reserve, and have never been put into possession. I feel it necessary to state that I had a small patrimony at Bermuda, which, on my finally quitting that Colony in 1815, I settled upon my Mother for her life. She is only eighteen Years older than myself, and I think has a better life. On the death of my grandmother, which took place soon after my arrival in this Colony, my Mother wrote a most pressing Letter to me to make some arrangement for her to join us; my brother and I are her only Children, and, on the death of her mother, she had no longer any tie in Bermuda. I thought it would be more advisable to dispose of her property altogether, than to rent it; and I had written her to that effect, when I received other Letters, from which it appeared that my Mother had entertained the same idea, and wrote to obtain my advice. I cannot immediately lay my hand on her second Letter, but I remember receiving it, while I was on a visit to Sir Thomas Brisbane in March, 1825, and communicating my Mother's wishes to him; he readily entered into her wishes; and I afterwards wrote to him to reserve ten thousand Acres of Land at Hunter's River, where my brother proposed taking his grant, subject to Lord Bathurst's sanction, as you will see by the correspondence enclosed. I afterwards wrote to my Mother, and pointed out the course she should pursue, in order to offer her estate at Bermuda to the Ordnance Department and get the exchange ordered through the Colonial Department. I have not yet received answers to my Letters, as there has not been time. Just before the Governor's sailing for England, I had reason to apprehend, from the illness of Major Ovens and the confusion of his Papers, that the arrangement between the Governor and myself on behalf of my Mother might not remain in any manner recorded in the Governor's Office; and I spoke to Mr. Stirling on the subject, which occasioned the passing mention, made of it in one of the Governor's notes to me, and which Note I found put up with the other Papers upon the subject. This, my Dear Sir, is the exact state of the reserved Lands at Hunter's River."

Land reserved
at Hunter river
for mother of
F. Forbes.

1827.
17 April.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship John.)

Sir,

Downing Street, 17 April, 1827.

T. S. Smeathman
recommended
as settler.

I am directed by Earl Bathurst to acquaint you that Paymaster Thomas Charles Smeathman, the Bearer of this letter, is proceeding to New South Wales with the view of Settling in that Colony under the Regulations,* which have been promulgated by His Majesty's Government in the general Order of the 8th June last; and I am to desire that you will cause a portion of Land to be allotted to that Officer in conformity with those Regulations.

Paymaster Smeathman has deposited the Sum of Four Hundred Pounds in the hands of the Colonial Agent, being one third of the value of his Commission; and I have to request that you will give directions for the repayment of the amount of his deposit Money in conformity with Lord Bathurst's Instructions of the 1st Ultimo.

I have, &c.,

R. W. HAY.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 54, per ship Australia; acknowledged by right hon. W. Huskisson, 9th November, 1827.)

My Lord,

Government House, 17th April, 1827.

Suspension of
sale of land.

1st. I have the honor to acquaint Your Lordship that the want of a sufficient Establishment of Surveyors to proceed with the regular Survey of the Colony and to Survey the Lands, applied for under the 11th Article of the Regulations, which accompanied my Despatch No. 60/1826, have rendered it necessary to annul that part of the Regulations, which relates to the Sale of Land.

2nd. It appeared to me advisable under the existing difficulties to submit the matter to the Executive Council; and I do myself the honor to transmit for Your Lordship's information the Copy of a Government Order, No. 41, which was issued in consequence.

Proposed sale
by auction
vice tender.

3rd. I have since been induced to request the attention of the Council to an objection, which is urged against the mode, prescribed for the Sale of Land by the public Instructions. I cannot perhaps put Your Lordship in possession of the case in a more satisfactory manner than by Communicating the enclosed Copy of a Minute, which has been submitted to the Council, in order that I might have the benefit of their Opinion upon this subject, which is of some importance.

4th. The accompanying Extract from the Minutes of the Proceedings of the Executive Council contains that Opinion; and I

* Note 65.

beg to recommend to Your Lordship that the Sale of the Crown Lands by public Auction may be substituted for their disposal by Tender. I am induced to submit to Your Lordship whether Instructions under the Sign Manual will not be necessary for any departure from the present Instructions for disposing or Granting of Land.

I have, &c.,

RA. DARLING.

P.S.—I regret to find that this letter, which was prepared early in December last, as soon as the subject had passed the Council, has by some oversight escaped observation until the present Moment.

R.D.

[Enclosure No. 1.]

GOVERNMENT ORDER No. 41.

Colonial Secretary's Office, 10th November, 1826.

1st. His Excellency the Governor having brought under the consideration of the Executive Council the measures proposed in the 11th Article of the Regulations (No. 35) for the "Granting and Sale of Land," which has been rendered impracticable from the impossibility of procuring the additional Surveyors, which are necessary under present circumstances, to enable the Commissioners to proceed in Valuing the Land in the manner pointed out in the King's Instructions, His Excellency is pleased in consequence to notify that so much of the Regulations, as relates to the "Sale of Land," must unavoidably be suspended until the Surveyors, who have been written for to England, shall have arrived, and the general Survey of the Country be more advanced, or until His Majesty's further pleasure shall be made known. In the mean time, it is His Excellency's Opinion that the detaching of any of the present establishment (as was intended) with a view to the immediate accommodation of Individuals wishing to purchase will interfere in a very injurious degree with the general Settlement of the Colony.

Suspension of regulations re sale of land.

2nd. His Excellency requests that the foregoing may be considered as an Answer to the applications, which have been received for the purchase of Land.

By His Excellency's Command,

ALEXANDER MCLEAY.

[Enclosure No. 2.]

MINUTE FOR THE EXECUTIVE COUNCIL.

4th December, 1826.

THE Council having advised at its meeting on the 3rd of last Month to suspend proceeding in the Sale of the Crown Lands, until the Lands can be Surveyed, as required by the King's Instructions, or until further orders shall be received on the subject, I am induced to request the attention of the Council to the objections, which have been made as to the mode ordered by His Majesty of disposing of the Lands by Sale.

Objections to sale of land by tender.

1827.
17 April.

Proposed sale by auction *vice* tender.

1827.
17 April.

Objections to
sale of land
by tender.

Proposed sale
by auction.

It is required by the 35th Clause of the Instructions that, after the Lands have been Surveyed and Valued by the Commissioners, they shall be put up to Sale for One Month, and shall be sold by *Tender*. It is to this part of the Regulations, which the Inhabitants object. It is stated that a Man may be desirous of obtaining a piece of Land immediately adjoining his own property for example, the real value of which may not be more than Half a Crown an Acre, and he tenders accordingly. Another Person, who makes a higher Tender, however small the Amount, obtains the Land, though the former on account of the local situation rather than lose the opportunity of purchasing would have paid much more for it. I, therefore, beg to submit to the consideration of the Council whether it may not be advisable humbly to recommend to His Majesty that, instead of disposing of the Crown Lands by Tender, they be put up to Public Auction at the average Value fixed by the Commissioners, and be sold to the Person (subject to the approbation of the Governor according to the Instructions), who shall bid the highest sum.

Considering the exceptions taken to the mode laid down in the Instructions, there can be no doubt that Lands in general, disposed of as above, would produce a larger Sum than if sold by Tender. Individuals in the latter case have no opportunity of increasing the Sum originally offered, however desirous they may be from the local situation of the Land, to pay more than the actual Value. It may perhaps be supposed that disposing of the Land by open competition may expose the Government to loss from the combination of Individuals, more than if the Land be disposed of by Tender. Government cannot, however, suffer materially if the Land be put up, as now proposed, at its estimated Value.

RA. DARLING.

[Enclosure No. 3.]

EXTRACT from Minute, No. 23, of the Executive Council, dated 30th December, 1826.

Sale by auction
recommended
by executive
council.

HIS EXCELLENCY then laid before the Council a Proposition relative to the Sale of Lands, shewing that disposing of them by Public Competition rather than by Tender, as directed by the King's Instructions, will prove in most cases advantageous to the Government and of great convenience to certain class of Purchasers.

The Council fully Coincided in opinion with His Excellency on this subject.

A true Extract:—H. DUMARESQ, Clerk of the Council.

EARL BATHURST TO GOVERNOR DARLING.

1827.
18 April.

(Despatch No. 33, per ship Cambridge; acknowledged by Governor Darling, 1st December, 1827.)

Sir,

Downing Street, 18th April, 1827.

I have the honour to acknowledge the receipt of your dispatch, dated the 30th August last, inclosing the Copy of a letter, which you had received from the Chairman of the Chambers of Commerce, respecting the embarrassed State of the Colony of New South Wales from the want of the necessary circulating Medium, and the means of obtaining Bills on England, together with the Copy of a Memorandum, which you had thought proper to submit to the Council upon this subject.

Financial
embarrassment
in colony.

I have deemed it right to refer your communication to the consideration of the Lords Commissioners of His Majesty's Treasury; and you will perceive, by the enclosed reply addressed to my Under Secretary, that their Lordships are of opinion that the cause of the embarrassments, which have arisen, is to be attributed partly to the improvident accommodation, which with reference to their Capital has been afforded by the New South Wales Bank, and partly to the facility which has existed of purchasing property upon credit, or carrying on Speculations in Articles not immediately convertible into Money; by which means the Parties have been unable to meet the engagements, which they had contracted, and those persons, upon whose credit they have heretofore obtained this accommodation, have not had sufficient available Capital to carry on the accommodation, which they had heretofore afforded.

The causes.

You will also observe that it is their Lordships' intention to supply you with farther quantities of Silver and Copper Money, but that they do not think it would be expedient to send out at present any Gold Coin for the reasons stated by them in their communication.

Shipment
of specie.

I have, &c.,

BATHURST.

[Enclosure.]

MR. J. C. HERRIES TO UNDER SECRETARY HAY.

Sir,

Treasury Chambers, 10th April, 1827.

The Lords Commissioners of His Majesty's Treasury having had under consideration your letter of the 12th Ult., transmitting the Copy of a Dispatch from Lieut't General Darling with the papers, therein referred to, relative to the embarrassed State of the Colony of New South Wales from the Want of the necessary circulating Medium, and the Means, which he has adopted with the advice of the Council, for relieving the present difficulties, under which all classes of the

1827.
18 April.

Causes of
financial
embarrassment.

Community are represented to labour in consequence of the insufficiency of the Currency; I have it in command to acquaint you, for the information of the Earl Bathurst, that it does not appear to My Lords that the Embarrassment at New South Wales has arisen from any want of the Circulating Medium, but rather from the great and improvident accommodation, which, with reference to their Capital and Means, has heretofore been granted by the New South Wales Bank, and which was specially adverted to in the letter* of this Board of the 6th of November last.

If the distress had arisen from any want of the Circulating Medium, it would have shewn itself, not by the inability of Parties to obtain Bills upon this Board for remittance, but by the inability of the Commissariat to negotiate Bills to an amount sufficient to carry on the public Expenditure, and thereby compelling the Government to resort to other temporary Means, until they could obtain a further supply of British Money from Europe; for, supposing £100,000 in British Money or any other Sum to be sent, it would only get into circulation thro' the Public Expenditure; and, while this sum was in the course of issue, it would not be absolutely necessary for the Commissariat to draw any Bills upon this Board. If the total of this Sum had been necessary for circulation, no part of it would have been returned into the Military Chest in exchange for Bills; and, upon its being exhausted, the Commissariat must have advertized for Dollars or other Coins to carry on the Public Expenditure, until a fresh supply could be obtained, or even it might have been necessary to resort to the issue of a small Quantity of Paper Money, which, from being made exchangeable for Bills upon this Board, and from the absolute Want of the Money for circulation, could not have suffered depreciation. This want of circulation, however, does not appear to be the evil, but rather that parties have, from the facility of obtaining credit, purchased property or carried on Speculations in Articles not immediately convertible into Money; and they are, therefore, unable to meet the engagements, which they have contracted, and the Parties, upon whose credit they have heretofore obtained this accommodation, have not sufficient available Capital to carry on the accommodation which they have heretofore afforded.

That a Reduction in the Public Expenditure and the consequent reduction of Prices may have had some tendency to aggravate the evil, My Lords are not disposed to deny; but it is necessary for the Public Interest that every proper measure tending to that object should be pursued.

It is their Lordships' intention to direct further quantities of Silver and Copper Money to be sent to the Colony, because they

* Note 66.

are of opinion that, when the present distress is abated, it will be found that the Money already sent will be absorbed into Circulation generally, and will not so rapidly return into the Military Chest, as it has hitherto done. But it must be recollected that every Sum sent in Specie will either cause a diminution to take place in the Amount of Bills to be drawn upon this Board, or it will be in the Military Chest unissued, and not increase the effective circulation of the Colony.

My Lords do not think it would be expedient to send out at present at least any Gold Coin, since it would be much more likely to be exported from the Colony than Silver, and could not, in their Lordships' opinion, have any tendency to alleviate the present distress.

I am, &c.,

J. C. HERRIES.

1827.
18 April.

Shipment
of specie to
be made.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch marked "Separate," per ship Australia; acknowledged by right hon. W. Huskisson, 31st October, 1827.)

My Lord,

New South Wales, 18th April, 1827.

I have the honor to transmit to Your Lordship the enclosed Extract from the "Monitor" News Paper of the 9th of last Month, as a necessary introduction to a representation, which I feel it my duty to submit to Your Lordship respecting Judge Stephen.

Extract from
Monitor
newspaper.

The "Monitor" and "Australian" having for several Months past been engaged in defaming the Government and endeavouring, by the most inflammatory Articles, to rouse the Convicts and Troops into opposition and hostility, I was the more surprized to see in the Monitor the report of what had fallen from Mr Justice Stephen on the Bench.

Opposition
by section
of press.

I was surprized not at the sentiments expressed, as no one appeared disposed to dispute that the Convicts possessed certain rights or to oppress them, but that he should have deemed it a fit opportunity to declare that he would not allow them "to be impugned or treated carelessly," when such a declaration from a Judge on the Bench could not fail to give effect to the impression, the Papers had endeavoured to make, that the Convicts were rigorously and harshly used by the Government.

Declaration re
convicts by
J. Stephen.

The Superintendent of Police informed me, through the Colonial Secretary immediately after the "Monitor" appeared, that the Magistrates, who were associated with him, had expressed much uneasiness at the declaration of Judge Stephen,

Alarm of
magistrates.

1827.
18 April.

Request for
confirmation
of report by
J. Stephen.

fearing they might subject themselves to prosecution, though they had no other object than the faithful discharge of their duty. Doubting the correctness of the Report in the "Monitor," I immediately wrote to Mr. Stephen, a Letter, of which I have the honor to transmit a Copy, requesting to be informed if the statement was Correct, adding, if it was, that it would be necessary to apprise the Magistrates.

Not having heard from Mr. Stephen on the subject, I wrote to him on the 19th, Nine days after my first Letter, requesting he would reply to it; when he forwarded an Answer, *dated the 12th*, in which he imputes to me a desire of interfering "between the Supreme Court and the other Tribunals of Justice to teach the Justices of the Peace that they are to look to the Governor, as the director of their proceedings, and to lessen that deference, which the Law requires from the inferior to the Supreme Courts."*

Alleged
interference
of governor in
law courts.

Your Lordship will judge from my Letter whether it furnishes any ground for such suppositions. It will be observed that Mr. Stephen states in his Letter that this is the "second time" he had been Called on by me to explain his Conduct. I was unable for some time to discover the former instance, to which he alluded; but I have since ascertained from him that it was on the occasion of a Report, made to me by Mr. Bannister, the Attorney General, immediately after my arrival.

Being desirous to avoid the necessity of a Public prosecution, which the Attorney General had urged, I employed my private Secretary, in Consequence of his intimacy with Mr. Stephen's family, to write a Private Note to the Judge, of which the enclosed is a Copy, wishing that the Editor should have an opportunity of correcting what I had no doubt was a misstatement, And never Meaning, as is evident from the nature of the Communication, to interfere with Mr. Stephen in the discharge of his duty.

If, in the case reported in the "Monitor" the Magistrates were in error, it was right they should be apprized; and, however gratuitous Mr. Stephen's declaration appeared that he would never allow the Convicts "to be impugned or treated carelessly," or injudicious at the moment, when the Papers were endeavouring

* *Marginal note.*—I have to remark on this quotation that, the Attorney General having soon after my arrival brought under my Notice the irregularity of the proceedings of some of the Magistrates, I consulted the Chief Justice on the occasion, who advised that a Circular Letter should be written to the several Benchmen by the Colonial Secretary, pointing out generally the irregularities and the Course that ought to be pursued, which was done as the Chief Justice had advised. I beg to refer Your Lordship to my Despatch, No. 36 of last Year, and to Your Lordship's reply, No. 11, approving of the Step which had been taken.

to inflame the Convicts and blacken the Acts and character of the Government, my only object was that the Magistrates should be informed of their error, and to prevent their being exposed to a repetition of the abuse and calumny, that had so frequently been heaped on them by the Papers.

1827.
18 April.

I have now to request Your Lordship's attention to the "Australian" News Paper, which is enclosed, containing an Article, which details circumstantially the Correspondence between Judge Stephen and myself. The materials for the Article, alluded to, could only have been supplied by Judge Stephen; and it will be seen that the Animadversions in the "Australian" are to the same effect as the observations in the Judge's Letter.

Correspondence
supplied to
press by
J. Stephen.

Neither myself nor my Secretary could discover the *first* instance, to which he alluded, the Communication having, as now appears, been made to him *in a Private* note, and the fact is it would not have been discovered but for the Clue, which Mr. Stephen gave to it in a Letter of the 1st of March, *four days after the Publication of the "Australian,"* in which my Conduct, with reference to the Correspondence with Judge Stephen in both Cases, has so unwarrantably been held up to the reprobation of the Public. It is evident from this fact that Judge Stephen must have furnished the "Australian" with the particulars, as I had no recollection of the first Correspondence, until he pointed out to me the time when it took place.

I appeal my Lord with that Confidence to your support, which a zealous and faithful discharge of my duty will, I trust, be Considered to give me a claim. I need not enlarge on the nature of my situation here or the state of the Government. The "Australian" News Paper, which is enclosed, will put Your Lordship in possession of both; and I earnestly entreat Your Lordship's attention to the leading and following articles in that Paper.

The matter, to which the *Second* Article alludes, is as follows:—Lieut't Governor Arthur, in Consequence of the state of the Press, had a Bill prepared for the purpose of restraining it agreeably to the Instructions, which he had received from your Lordship; which Bill being certified by Chief Justice Peddar, as required by the Act of Parliament, He transmitted it to me wishing to ascertain if I was disposed to adopt the same course. I immediately communicated the Bill Confidentially to Mr. Forbes, who returned it with a Private Letter, expressing in strong terms his disapprobation of it, which satisfied me he would not certify me, if required, to the same effect; and I, therefore, forbore pressing it. The matter seems to have lain dormant

Confidential
information
disclosed by
F. Forbes.

1827.
18 April.

Confidential
information
disclosed by
F. Forbes.

until the Editor of the Australian was put in possession of the circumstance of the Correspondence with Judge Stephen, which appears to have been considered a convenient opportunity for bringing it forward, so that the virtues of the two Judges might be contrasted with the conduct of the head of the Government. It may be important to state here that the circumstance of the Bills having been received from Van Diemen's Land was not communicated to any person whatever, but Judge Forbes, except Mr. McLeay and my Private Secretary. The Bill was never for a moment out of my possession, except when referred to Mr. Forbes; and I do not recollect that Mr. McLeay ever saw it, though I mentioned to him that I had received it.

It is further important to remark that, after I returned the Bill to Lieut't Governor Arthur, which I accompanied with a Copy of a Private Letter, I had received from Mr. Forbes on the subject of the Press, dated the 1st of September last (the same that was transmitted to Mr. Hay on the 4th December), that Lieut't Governor Arthur wrote to me for permission to communicate that Letter confidentially to Mr. Peddar, assuring me that the subject should not be mentioned even to him, until he should be authorized by me. I did not reply to Lieut't Governor Arthur's Letter, until the 15th of this month, four days ago, and my Answer cannot possibly have yet reached him; so that I am satisfied the information, contained in the "Australian" on this subject, could not have been received from Van Diemen's Land, and it is evident it must have been the object as it was in fact the interest of both Lieut't Governor Arthur and Mr. Peddar to have kept every Circumstance, connected with the Bill, entirely to themselves, and not to have proclaimed to the Public that they had been induced to withdraw it in consequence of their communication with this Government.

It is obvious, if Men filling the highest stations, whose Duty it is to afford support to the Government (and support can no where be more necessary than it is here), become instrumental to the abuse and degradation of that Government through the means of the opposition Papers, though it may answer one object to ensure their own popularity amongst certain classes of Society, it must destroy that Confidence which the people generally ought to place in the Government, and in a Colony composed, as this is, produce, if not checked, anarchy and revolt.

I have very unwillingly trespassed so long on your Lordship's time. But it is necessary Your Lordship should be informed of the state of the Government, as connected with the proceedings of the Judges; and your Lordship will at least be enabled to form

Evil effect of
conduct of
Judges.

an opinion of the matters, which are the subjects of this communication, by the facts I have now had the honor to submit.

1827.
18 April.

I have, &c.,

RA. DARLING.

P.S.—I beg to enclose a Copy of a Letter from the Actg. Attorney General, which states that the Report in the Monitor of the 9th ultimo, of what Judge Stephen delivered in Court, is substantially correct.

Confirmation
of report in
Monitor
newspaper.

R.D.

[Enclosures Nos. 1, 2, 3, and 4.]

[Enclosures numbered 2, 3, and 4 were duplicates of those numbered 1, 2 and 3 in Governor Darling's despatch to under secretary Hay, dated 27th March, 1827; see page 208 et seq. Enclosure No. 1 was the extract from the "Monitor" newspaper quoted in Governor Darling's letter dated 10th March, 1827; see page 208.]

[Enclosure No. 5.]

LIEUT.-COLONEL DUMARESQ TO JUDGE STEPHEN.

My dear Sir, Government House, 28th January, 1826.

You are aware, I believe, that the Attorney General has Notieed, in an Official manner, the following passage, inserted in the Sydney Gazette, and purporting to be words employed by You on the 19th Instant in the case of Mr. Scott and Mr. Walker.

Request for
correction of
report in press.

"It would appear that all, which had occurred, had arisen out of a Personal dispute between the Archdeacon and Mr. Walker."

The Governor would be glad if you could furnish me with the precise words you used (or as nearly so as you remember), in order that the error in the report may be corrected. He thinks that this will be better than prosecuting the Editor of the Paper.

I have, &c.,

H. DUMARESQ, Priv. Secy.

[Enclosure No. 6.]

[This was the issue of the "Australian" newspaper dated 27th March, 1827.]*

[Enclosure No. 7.]

ACTING ATTORNEY-GENERAL MOORE TO GOVERNOR DARLING.

Sir, George Street, Sydney, 29th March, 1827.

In Answer to Your Excellency's Letter of Yesterday's date, respecting a paragraph, which appeared in the first Column of the Second page of the Monitor Newspaper of the Ninth Instant, I beg leave to state that I believe the paragraph in question

Press report
confirmed by
W. H. Moore.

1827.
18 April.

does contain a Correct Report, of what was delivered from the Bench of the Supreme Court by Mr. Justice Stephen on the occasion alluded to, as far as the case is reported.

I have, &c.,
W. H. MOORE.

GOVERNOR DARLING TO EARL BATHURST.
(Despatch No. 55, per ship Australia.)

19 April.

My Lord,

Government House, 19th April, 1827.

Surgeons
recommended
for promotion.

In the event of Your Lordship's approving of the employment of a certain Number of Surgeons, as proposed in the report of the Board, which accompanies my Despatch No. 48, I beg leave to submit to Your Lordship the Names of the following Assistant Surgeons, with the dates of their respective Colonial Appointments, who have been pointed out to me as meriting promotion, Vizt.

George Brooks, 20th November, 1819; T. B. Allen, 1 March, 1820; Pat Hill, 27th January, 1821; James Mitchell, 11th June, 1823; Matt'w Anderson, 18th February, 1824.

Mr. Hill and Mr. Anderson are both Surgeons on the Half Pay of the Navy, and Mr. Mitchell was an Assistant Surgeon in the Military Service, and are to my own knowledge very deserving Men. Of Mr. Brooks and Mr. Allen, I have had no opportunity of judging.

I have, &c.,
RA. DARLING.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 56, per ship Australia: acknowledged by right hon. W. Huskisson, 28th January, 1828.)

21 April.

My Lord,

Government House, 21st April, 1827.

Examination of
Swan river.

I had the honor to acquaint Your Lordship, in my Despatch No. 96 of last Year, that Captain Stirling was about to proceed with His Majesty's Ship Success to Swan River, situated on the South West Coast of New Holland, in order to ascertain if the Opinion, which had been formed of the local advantages of that part of the Coast, as detailed in the Statement, which accompanied my Despatch above referred to, was correct.

It must be unnecessary for me to offer any Opinion on the Subject, as Captain Stirling's report of his Expedition, which I have now the honor to enclose, will afford Your Lordship all the information and means of judging, which I possess.

Assuming that the Calculation of the periods necessary to make the respective Voyages to and from India, and other parts,

are correctly stated, Swan River would appear to hold out advantages highly deserving attention. A convalescent station might be established there, as proposed by Captain Stirling, for the Sick and Invalids from India, instead of sending them at once to England. A passage of Thirty days, the period stated in the Report as necessary for Vessels to go from India to Swan River, is inconsiderable in comparison with the length of time required to make the Voyage to Europe; and, at Swan River, the advantages to an Invalid in point of Climate would I have no doubt be greater than in England. The Establishment, however, if to any extent, must be effected directly from England or India, totally independent of this Colony, Swan River being too remote and the Voyage too uncertain to admit of its depending on this place for its supplies. It will be seen by the Report that Captain Stirling considers that Swan River possesses all the advantages with reference to the Trade with the Eastern Islands, which attach to Melville Island or any part of the North West Coast of this Territory. Among the natural advantages of Swan River, it will be observed that good Water is abundant. The Country is besides favorable for Cultivation, the Soil in general being excellent, Some Specimens of which and of the natural production of the Country I do myself the honor to forward to Your Lordship by this opportunity. And the Scenery is represented as at once grand and picturesque.

1827.
21 April.

Advantages of
Swan river for
settlement.

It is much to be regretted that the Water at the entrance of Swan River is not of a greater depth, there being only about Six feet for a Mile above its Mouth, More particularly as Melville Water, through which it flows, appears to be a Commodious and Magnificent Basin. Nautical Men can, however, best determine whether the advantages of the external Anchorage of Gages's Roads and Cockburn's Sound are likely to compensate for the inconvenient nature of the River. As Captain Stirling's visit to Swan River may attract attention and the report find its way into the French papers, it appears desirable, should His Majesty's Government entertain any intention of forming a Settlement at that place, that no time should be lost in taking the necessary Steps.

Shipping
facilities.

I cannot close this Communication without pointing out the Zeal and Ability, with which Captain Stirling undertook and has completed this Voluntary Service; and I beg to be permitted to mention him as an Officer highly deserving Your Lordship's approbation and the confidence of His Majesty's Government.

Testimony in
favour of
J. Stirling.

I have, &c.,

RA. DARLING.

1827.
21 April.

[Enclosures.]

[*These were:—*

Captain Stirling to Governor Darling, 18th April, 1827.

Captain Stirling's narrative and observations.

Observations on the Soil, etc., of the Banks of Swan River,
by C. Fraser.

Chart of Swan River.

*The first three mentioned will be found in a volume in series III,
and the chart in the volume of charts and plans.]*

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 57, per ship Australia; acknowledged by right hon.
W. Huskisson, 7th November, 1827.)

23 April.

My Lord,

Government House, 23rd April, 1827.

Insurrection
of convicts at
Norfolk island.

I have to report to Your Lordship that the Prisoners at Norfolk Island made an attempt to surprise the Garrison on the Morning of the 25th of September last, which, I am happy to add, was not attended with any serious consequence, one Soldier only having lost his Life on the occasion. One of the Convicts was Shot and two Drowned. Having failed in this attempt, they proceeded immediately to the Landing place, and, to the Number of about Fifty, embarked in the Boats belonging to the Establishment and put to Sea. They steered for Philip Island, situated Seven Miles to the Southward of Norfolk Island, where they landed. One of the Boats belonging to the Garrison being Leaky and out of repair, the Prisoners left it behind. But the Commandant, Captain Donaldson of the 57th, had the Leak stopped, and embarked the following day with a few Soldiers in pursuit of the fugitives to Philip Island. The greater Number of these had been secured and brought back, when the Vessel sailed with the account of the event; and I presume the remainder of the fugitives have since been taken, as, being deprived of the Boats which Captain Donaldson recovered at Philip Island, they had no means of escape from thence.

I have enquired into the particulars of the occurrence, now reported, but do not find that any Material blame was attributable to any one, though sufficient precautions do not appear to have been taken in Securing the Boats. Every necessary measure, however, has now been adopted. It appears that the Convicts commenced by surprising a small Guard, which was posted at the Hospital, and were proceeding to the Soldiers' Quarters; but, information having been received there of what had taken place, the Troops were immediately under Arms, and the Convicts fled to the Boats, as has been already stated. It has been ascertained that several of the Prisoners, who were

concerned in the Revolt, had been forced by the Ring Leaders to join their Party. At the time of the Revolt, the Detachment of Troops consisted of Fifty Men, and the Number of Prisoners was One Hundred and fifteen. The latter has lately been increased to 134, and the Detachment has been augmented to 60 Rank and file, which, though sufficient at present, must be strengthened in proportion as the Prisoners accumulate.

I beg leave to add that the Ringleaders have been brought up to Sydney and will be immediately put on their Trial.

I have, &c.,

RA. DARLING.

1827.
23 April.

Insurrection
of convicts at
Norfolk Island.

GOVERNOR DARLING TO LIEUT.-GENERAL SIR HERBERT TAYLOR.

(Despatch per ship Australia.)

My dear Sir Herbert, Government House, 25th April, 1827.

25 April.

I have forwarded an application from Lieut. North to be allowed to sell his Commission, which I hope will be permitted. He has a Wife and Family, and is desirous of obtaining a Civil Appointment. As he will not have a claim to sell before the month of February next, he might perhaps be placed upon Half Pay in the mean time, or his retirement might lay over until that time. You will forgive my suggesting this, as I do it solely on account of his Family, to whom the Money, arising from the sale of his Commission, would be of the greatest importance.

Application
from S. North
to sell his
commission.

I remain, &c.,

RA. DARLING.

[Enclosure.]

LIEUTENANT NORTH TO LIEUTENANT DE LA CONDAMINE.

Sir, Sydney, New So. Wales, 25th April, 1827.

His Excellency the Governor in Chief having promised to recommend me for an appointment in the Civil Government, I am desirous of settling my Family in this Colony, and shall, therefore, esteem it a favor, if His Excellency will recommend me to His Royal Highness the Commander in Chief for the purpose of being allowed to retire from the Army by the Sale of my Commissions.

I am aware that I shall want a few months of completing the term of fifteen years service, required by the General Order of the 25th of April, 1825; but, as that period will have expired before the confirmation of any Appointment, I may obtain, could be received, I trust it will not be considered an impediment to a compliance with my request.

I beg leave to state that my first Commission in the Line (dated 10th February, 1813) was in the late 100th Regiment, which I immediately joined, and continued to serve with, until

1827.
25 April.

its reduction in 1818. I was subsequently appointed to full pay in the 27th Regiment, from which I was removed (at my own request) to the New South Wales Veteran Companies.

I have, &c.,

SAM'L NORTH, Lieut., N. S. Wales Veterans.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 58, per ship *Australia*; acknowledged by right hon. W. Huskisson, 10th November, 1827.)

26 April.

My Lord,

Government House, 26th April, 1827.

Appointment
of Wilford as
surveyor of
roads and
bridges;

Captain Dumaresq of the Royal Staff Corps, who at my request has consented to continue for the present to Act as Civil Engineer, there being no other person competent to the duty in the Colony, having expressed a desire to be relieved from the charge of the Roads, as he found he could not conveniently attend to both Departments, I have the honor to acquaint Your Lordship that I have appointed Lieut. Wilford of the Royal Staff Corps Surveyor of Roads and Bridges, with a Salary of Ten Shillings a day, and an allowance of Forage for two Horses, in addition to the one he is allowed in his Military capacity. It will be seen, on reference to the report which accompanies my despatch No. 48, that the Board has recommended the Surveyor receiving a Salary at the rate of 15s. a day, with an Allowance for three Horses, from the Colonial Government; but, as Mr. Wilford is a Subaltern, though perfectly competent, I have considered that the remuneration, I have authorised, will be sufficient in this case. I am aware, however, that the Expense the Surveyor of Roads is subjected to in Travelling is very considerable. He is necessarily on the Roads for several days at a time, and is obliged to send on relays of Horses on these occasions. I had an opportunity of knowing that Captain Dumaresq kept *four* Horses for this duty.

and of
assistant
surveyors.

I have the honor further to report to Your Lordship that I have appointed three Subaltern Officers as Assistant Surveyors of Roads and Bridges, with an Allowance of Five Shillings a day, and Forage for two Horses each, as proposed by the Board. These Officers are employed on the three great Roads* leading to Argyle, Bathurst and Hunter's River, each having several Parties of Convicts under his Superintendence. I have also employed a Mr. Campbell at Ten Shillings a day to Superintend the Parties about Newcastle. When I am satisfied that he is fully qualified

* Note 68.

for the Situation, it is my intention to authorise his receiving the Salary and Allowances proposed by the Board, vizt. £200 a Year and Forage for two Horses.

I have, &c.,

RA. DARLING.

1827.
26 April.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch marked "Separate," per ship Australia.)

My Lord,

Government House, 29th April, 1827.

29 April.

I have the honor to request Your Lordship's Instructions with respect to the confirmation of a Reserve of 10,000 Acres of Land, ordered by my predecessor to be made in favor of the Chief Justice, Mr. Forbes.

Land reserved
for F. Forbes.

The enclosed Copy of Sir Thomas Brisbane's Order for this Reserve will explain the grounds, on which it was given. I stated some time since to Mr. Forbes, when I expressed my intention of writing to Your Lordship on the subject, that I conceived the exchange of Land, as proposed by him, would depend on the circumstance of His Majesty's Government requiring the Land at Bermuda, and also on the Value of it with reference to that, which he was desirous of obtaining here, and of which I am informed he is actually in possession.

I beg to observe that Mr. Forbes has also received Authority to select 2,560 Acres, as an Officer of the Civil Government, and that he has been gratified with a further Grant of about 50 Acres, selected by himself at Emu Plains, with a view of erecting a Country residence.

Land to be
selected by
F. Forbes.

I have, &c.,

RA. DARLING.

[Enclosure.]

SIR THOMAS BRISBANE TO SURVEYOR-GENERAL OXLEY.

Sir,

Government House, 7th April, 1825.

In consequence of a Communication from the Chief Justice, stating that he intended to submit propositions to His Majesty's Ministers relative to exchanging certain Lands, etc., the property of his Mother in the Island of Bermuda, for an equivalent out of the unoccupied Crown Lands in this Colony, and requesting that a Reserve of Land to a certain extent might be made, to be exchanged, if it should meet Earl Bathurst's approval, or, if otherwise, to be purchased at the rate and upon the terms, at which the Crown Lands are at present disposed of.

Land to be
reserved for
F. Forbes.

You are, therefore, hereby authorized and directed to reserve Ten Thousand Acres of Land, selected in the County of Durham (the same being unoccupied or reserved for the use of

1827.
29 April.

Land to be
reserved for
F. Forbes.

Government) Bounded on the South by Granted Lands; On the East by a North line to the first North Ponds; on the North by those Ponds to the River, and on the North West and West by Hunter's River to the Granted Lands aforesaid. The Lands comprised within the above Boundaries, you are to consider as unalienable, by Grant or otherwise, to any Individual.

I have, &c.,

THOMAS BRISBANE.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch marked "Circular No. 1." per ship Cambridge; acknowledged by Governor Darling, 1st October, 1827.)

30 April.

Sir,

Downing Street, 30th April, 1827.

Viscount
Goderich
appointed
to succeed
Earl Bathurst.

His Majesty having been pleased to honor me with the Seals of the Colonial and War Department in the room of the Rt. Honble. the Earl Bathurst,* I take the earliest opportunity of acquainting you therewith.

It will give me great satisfaction to be able to fulfil His Majesty's Gracious Intentions in this appointment; and, as it is His Majesty's Pleasure that your Dispatches should for the future be addressed to me, I shall not fail to lay them immediately before the King and to transmit to you such Orders as His Majesty shall think fit to give thereupon.

I have, &c.,

GODERICH.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch marked "Separate." per ship Australia.)

My Lord,

Government House, 30th April, 1827.

Returns
of troops.

I have the honor to transmit, for Your Lordship's information, the Monthly Returns for February and March last of the Troops, stationed in this Command.

I have, &c.,

RA. DARLING.

[Enclosnre.]

[Copies of these returns are not available.]

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 1. per ship Harmony; acknowledged by Governor Darling, 1st October, 1827.)

1 May.

Sir,

Downing Street, 1 May, 1827.

With reference to Earl Bathurst's Dispatch of the 5th August, 1826, announcing the Appointment of Major Morisset

to the situation of Commandant of Norfolk Island, and directing that his Salary should commence from the date of his arrival in the Colony. I do myself the honour of acquainting you that, in consequence of the heavy expenses, to which that Officer has been exposed by his long and unexpected detention in this Country, I consider him entitled to receive half the Emoluments of his Office, from the date of his embarkation in this Country to proceed to his destination, until his full Salary commences; and I am to desire that you will give the necessary directions accordingly.

1827.
1 May.

Moiety of salary
granted to
J. T. Morisset.

I have, &c.,

GODERICH.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 59, per ship Australia; acknowledged by right hon. W. Huskisson, 15th November, 1827.)

My Lord,

Government House, 1st May, 1827.

I have the honor to submit to Your Lordship the accompanying Plans of Buildings, proposed to be erected at Norfolk Island for the accommodation of the Establishment and Prisoners at that Settlement, together with the Estimates of the Expence of such Materials, as it will be necessary to purchase to complete the Works in question.

Plans and
estimates for
buildings at
Norfolk island.

It will be observed that the Value of the Timber, Shingles, Stone, Brick, Lime, and the other Materials required, which are procurable on the Spot by Convict Labour, is not taken into Account.

The buildings are as follows, vizt.

Prisoners' Barracks	£417	2	8
Quarters of Civil Officers	154	17	3
Hospital	122	13	10
Barracks for the Troops	136	5	11

£830 19 8

These Buildings being urgently required for the Security of the Prisoners and the accommodation of the Garrison and persons, employed at Norfolk Island, I had given Orders for their being proceeded on, and the Materials were actually embarked, when I received the Instructions of the Lords of the Treasury, which interdict my incurring any Expence beyond the Sum of £200 without Special Authority; and I have in consequence suspended the Works in question, until I am duly authorised to proceed. I beg to point out the expediency of the necessary

1827.
1 May.

Authority being sent out as early as possible, as the Establishment is suffering from the want of accommodation, and the Prisoners are continually encreasing in Number.

I have, &c.,

RA. DARLING.

[Enclosures.]

[These estimates, which specified the number and cost of nails, brads, screws, hinges, locks, paint, lead, iron, etc., required, have been omitted.]

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 2, per ship Cambridge; acknowledged by Governor Darling, 1st October, 1827.)

2 May.

Pardons for
J. J. Napper,
W. and S.
Webb;

Sir,

Downing Street, 2nd May, 1827.

I do myself the honor of transmitting to you the inclosed Conditional Pardon, which His Majesty has been graciously pleased to grant to John J. Napper, William Webb and Sarah Webb, in consideration of the circumstances, stated in the despatch, which you addressed to Earl Bathurst on the 2nd of September last; and I have to desire that you will take the necessary measures for carrying His Majesty's Intentions with respect to these Persons into effect.

I have, &c.,

GODERICH.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 3, per ship Cambridge; acknowledged by Governor Darling, 1st October, 1827.)

Downing Street, 2nd May, 1827.

and for
J. Ridgway
and
E. Colthurst.

[This was a letter similar to above re pardons for John Ridgway and Edward Colthurst, reported in a despatch dated 8th October, 1826.]

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 60, per ship Australia; acknowledged by right hon. W. Huskisson, 30th January, 1828.)

3 May.

Report on
settlement at
King George's
sound.

My Lord,

Government House, 3rd May, 1827.

In reference to my Despatch No. 77/1826, notifying that the Detachment of Troops and Prisoners to form the Settlement at King George's Sound had proceeded to their destination, I have now the honor to forward for Your Lordship's information a Copy of Major Loekyer's report, whom I employed to establish the Settlement.

It will be perceived that, as far as Major Loekyer proceeded into the interior, a distance of about five and thirty Miles, the

Soil was very unpromising and held out no inducement to Settlers, though he appears to be of opinion, from Certain Circumstances, that the Land further from the Coast must be of a good description.

1827.
3 May.

Major Lockyer states that Water is abundant and of a good quality. That there is a variety of Timber fit for every purpose. Limestone, Granite, and Iron Stone are common. Fish of a good quality and of various kinds may be had in any quantity; As likewise all the varieties of Water Fowl, Black Swans, Wild Geese, Ducks, etc.

Abundance
of natural
products.

The observations as to the importance of King George's Sound as a Naval Station during War appear deserving attention. If an Enemy were in possession of it, the Trade with this Colony and Van Diemen's Land might no doubt be easily intercepted. As to its establishment as a Penal Settlement, dependent on this Government, I beg to refer Your Lordship to my public Letter by this opportunity to Mr. Hay, dated the 14th Instant; and, in reference to the difficulty of Communicating with King George's Sound, I do myself the honor to add the following Extract from that Letter in order the more immediately to place the subject before Your Lordship vizt.

Importance as a
naval station.

"King George's Sound is situated at the Western extremity of the South Coast. The direct Communication is open only from January to March, and is even then attended with extreme difficulty and uncertainty. In proof of this, it is only necessary to mention that the Brig Amity, a Vessel much above the common Class, which was employed in conveying the Persons destined to form the Settlement, was obliged first to put into Port Dalrymple and afterwards to the Derwent, to repair at Hobart Town the damage she had sustained. Shortly after this a Second Vessel, a remarkably fine Schooner, was sent with Supplies for that Settlement in Company with His Majesty's Ship Success, when proceeding to Swan River, and, after being out nearly three Months, returned to this in consequence of the loss of her Rudder without having reached her destination. Another Vessel will be immediately despatched for that Settlement with Supplies through Torres Straits; and, as she must return to this South about, as it is termed, she cannot be expected here in a shorter period than three Months."

Difficulties of
communication
between
Sydney and
King George's
sound.

As to the Whale Fishery, to which Major Lockyer alludes, or the measures necessary for the preservation of the Seals, which abound on the Southern Coast, I have in fact given no attention to the Subject, being without means of carrying into effect any measures which it might be deemed expedient to adopt. I now

Whale and
seal fisheries.

1827.
3 May.

beg to State to Your Lordship that I shall consider it my duty to continue the Settlement at King George's Sound, until I am honored with Your Lordship's Commands. I have, &c.,

RA. DARLING.

[Enclosure.]

[*This was major E. Lockyer's report, addressed to the colonial secretary, and dated at Sydney 18th April, 1827, which will be found in a volume in series III.*]

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 61, per ship Australia.)

5 May.

My Lord,

Government House, 5th May, 1827.

Deficiency of
military
officers and
rank and file.

I feel it my duty to request Your Lordship's attention to the state of this Government with reference to the Number of Troops, attached to the Military Command. The deficiency in point of Officers is as seriously felt as that of the Rank and File, on whom the duty bears with great severity. The present number of Officers is totally inadequate to the duties of the command. Though a few Men are sufficient at some of the Settlements, local circumstances render it desirable that a Captain and Subaltern should be stationed at most of them. In some cases, at the Penal Settlements for example, a Captain and two Subalterns *at the least* are required; but it has never been in my power to detach a Second Subaltern, even to *Norfolk Island* or Port Macquarie, though for some time after my arrival the Number of Prisoners at the latter place amounted to 1,500. It is unnecessary to observe that it is not every Officer, whose tour of duty it may happen to be, who is calculated for the charge of a Penal Settlement. And, as to the Subalterns, there is of course always a proportion, who are young, and, being totally unfit for detached duties of this nature, are necessarily kept at the Head Quarters of their Corps. These are besides not qualified to sit as Jurors, and, for several Months in the Year, Eight of the Officers, stationed in Sydney, attend the Supreme Court and do no other duty.

Distribution
of troops.

Since forwarding the Wing of the Buffs to Calcutta, I have reduced the several Posts as much as possible; and I do myself the honor to transmit for Your Lordship's information a statement, shewing the numbers detached and those at *Sydney*. In considering the latter, it is necessary to make allowance for the Men, who are not effective for immediate duty. The Numbers now in this Town compose the Head Quarters of three Corps, and include Tailors, Sick Servants, Musicians, and other Non-effectives, which diminish very considerably (equal to one third) the duty Soldiers of the Garrison.

Those do not at present exceed 480 Rank and File, while the Non-effectives are at least 150, and 110 are on duty daily, leaving the Men without allowing for extra Duties scarcely two nights in Bed.

1827.
5 May.

Troops
stationed at
Sydney.

There are at present *Seven* Captains detached, which leaves but *One* with the Head Quarters of the 57th, and *two* with the 29th. No one is more aware than I am of the exertions, which are used, under the direction of His Royal Highness, The Commander in Chief, to keep the Companies on Service complete; but, where the Voyage is so long, the Corps can never have their due proportion of Officers, as the Vacancies, occasioned by these returning Home in consequence of Sickness, etc., are never filled up in a less period than Eighteen Months.

I beg to apprise Your Lordship that, under the circumstances I have now had the honor to represent, I shall not feel myself at liberty to forward the remainder of the Buffs to India, until such time as the Command is sufficiently strengthened to enable me to do so with convenience to the Troops and with perfect security to the Colony. Your Lordship will perceive how desirable it is that an Arrangement should be made for some permanent addition to the Force allotted for this Command. The Prisoners are very numerous, and every possible exertion has been used by the Opposition Papers to incite them to Acts of hostility against the Government.

Detachment of
3rd regt. to
be detained.

2nd. The Men of the Veteran Companies, having proved unfit for the duties of the Mounted Police, being in general unequal to the exposure and fatigue, which are unavoidable in that Service, have been returned to Head Quarters; and I am consequently completing the Number required by the temporary Employment of such Soldiers, as are necessary, from the Corps in Garrison as heretofore.

The mounted
police.

3rd. I have lately been under the necessity of authorising the purchase of several Horses for the Establishment of the Mounted Police, which I propose, as I have informed Your Lordship on a former occasion, completing to 60 in Number. They have cost on an average about £55; and, as the Service would have suffered by waiting for the Authority required by the Treasury Instructions, I request Your Lordship will be pleased to sanction the measure that the charge may be admitted by the Auditor in the Public Accounts.

Purchase of
horses for
mounted police.

I have, &c.,

RA. DARLING.

P.S.—I do myself the honor to transmit for Your Lordship's information Copy of a Letter, which I have addressed to His Royal Highness, The Commander in Chief, on the Subject of this Communication.

R.D.

1827.
5 May.
Distribution
of troops in
N.S.W.

[Enclosure No. 1.]
DISTRIBUTION of the Troops in New South Wales.

Stations.	Field Officers.	Captain.	Subalterns.	Serjeants.	Rank and File
Parramatta District :—Longbottom	10
Glebe Farm	10
Parramatta	1	..	1	2	62
Windsor	1	1	15
Liverpool	1	1	15
Emu Plains	1	1	12
Bathurst District :—Bathurst	2	2	37
Molong Plains	4
Wellington Valley	1	15
Fish River	4
Cox's River	1	1	12
Weatherboard Hut	1	10
Springwood	1	10
Penal Settlements :—Norfolk Island	1	1	2	60
Moreton Bay	1	1	4	74
Port Macquarie	1	1	4	82
Detached Stations :—Newcastle	1	1	2	40
Wallis Plains	1	..	11
Illawarra	1	..	10
Western Port	1	1	18
King George's Sound	1	..	1	18
Melville Island	1	1	2	40
Port Essington	1	..	1	30
Total Detached	1	7	14	28	599
Remaining at Sydney ..	3	4	10	32	486
Total Strength	4	11	24	60	1,085

The two Companies of Veterans and the Company of the Royal Staff Corps are not included in the above.

[Enclosure No. 2.]

[This was a copy of the despatch to Sir Herbert Taylor, dated 15th May, 1827; see page 307.]

UNDER SECRETARY HAY TO GOVERNOR DARLING.*

8 May.
Recommend-
ation of Kempt
as settler.

Dear Sir,
Mr. Kempt, who is about to proceed as a Settler to New South Wales, will have the honor of delivering this letter to you; and I am directed by Lord Goderich to request that you will afford him such facilities towards the attainment of his objects, as may not be inconsistent with the existing Regulations.

I have, &c.,
R. W. HAY.

* Note 6.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 62, per ship Anstralia: acknowledged by Sir George Murray, 30th August, 1828.)

1827.
8 May.

My Lord, Government House, 8th May, 1827.

I have the honor to transmit for Your Lordship's information the Copy of a Correspondence, which has taken place between the Chief Justice and myself on the Subject of a Bill,* proposed to be passed in conformity with the Instructions, which Your Lordship addressed to me, dated the 12th July, 1825, No. 5.

Proposed act
to regulate
the press.

As a regular Series of the News Papers have been forwarded to Your Lordship's Office, and extra Copies of some of those containing Articles of a seditious and inflammatory Nature have been specially transmitted to Your Lordship's under Secretary of State, it is, I presume, unnecessary for me in this place to do more than point out that the result of a recent Trial,† the increasing intemperance of the Papers, and the obvious effect they had produced more particularly on the Convict Population, induced me to write to the Chief Justice, as will be seen by Enclosure No. 1, requesting he would consider the present state of the Press, and let me know how far he felt himself at liberty to sanction a Bill for carrying into effect the measures, directed by Your Lordship's Despatch, dated the 12th July, 1825. His answer, as will be seen by Enclosure No. 2, states that he should be ready to certify any Ordinance, which should be laid before him, so far as he was authorised by Law.

Reasons for
proposed
measure.

Feeling some embarrassment from this reply (being in fact without any legal Adviser), I determined to avail myself of the Copy of a Bill in my possession, which had been communicated to me by Lieut. Governor Arthur, and was prepared, as he informed me, by the Law Officers of his Government in consequence of Your Lordship's Instructions (being similar to those I had received) to him, and certified by Chief Justice Pedder; and I accordingly had a Draft of a Bill prepared, which I laid before the Executive Council, the whole of the Members being present with the exception of the Chief Justice, who had gone into the Country. The Council fully approved of the Bill as necessary to the restraint of the Press, as will be seen by the accompanying Extract from the Minute of the Proceedings, and advised its being forwarded to the Chief Justice for his certificate, in order to its being submitted to the Legislative Council. The Bill was forwarded accordingly, and, after some explanations, was certified by the Chief Justice, the six first clauses being

Bill proposed
in Tasmania.

Draft bill
approved by
executive
council;

and certified
by chief justice,
with clauses
deleted.

* Note 70. † Note 71.

1827.
8 May.

Rejected
clauses.

rejected as repugnant to the Laws of England. I do myself the honor to transmit a Copy of the rejected Clauses that your Lordship may see they were framed in strict conformity with Your Lordship's Instructions.*

I am not aware it is necessary for me to take up more of Your Lordship's time on this subject. I am desirous only of shewing that I have endeavoured to carry Your Lordship's Orders into effect. The News Papers themselves will prove that the restrictions on the Press were not attempted before they were necessary.

Reasons for non-
prosecution of
editors for libel.

It will be observed that The Chief Justice states in the Enclosure No. 6 that there has not been a solitary instance of prosecution for Libel by His Majesty's Attorney General, although the Safety of the Colony is supposed to be endangered by the licentiousness of the Press. In making this observation, he must have forgotten that, if no prosecution had taken place, it was occasioned in a great measure by pursuing the course he had recommended, which was that the proceedings of the Papers should be noticed as little as possible for a certain time, in order that they might commit themselves in such a Manner, as would fully satisfy Parliament of the necessity of imposing more than the ordinary restrictions on the Press. Had Prosecutions been instituted, the Editors would have been more circumspect. This has been the cause of the forbearance of Government for some Months past. When, from the circumstance of its being supposed the New Act for these Colonies would be disposed of during the present Sessions, it appeared unnecessary any longer to abstain from Prosecuting the Parties concerned in the Papers, my attention was drawn to a case,† in which Dr. Wardell had been prosecuted for a Libel, which appeared in the Australian, but from the want of proof of his being the Editor, as I understand, the Prosecution fell to the ground.

As the Government had given directions for prosecuting the "Australian" for a Libel on the Chairman of the Quarter Sessions, I thought it important to prevent a recurrence of this nature; and, from this and the State of the Press generally, as I have mentioned at the commencement of my Letter, I was anxious under Your Lordship's Instructions that the Laws in this respect should be rendered clear and effectual.

I have, &c.,

RA. DARLING.

* *Marginal note.*—The Clauses, which were not objected to by the Chief Justice, form the Act of Council No. 2, which is forwarded to Your Lordship by this opportunity.

† Note 71.

[Enclosure No. 1.]

GOVERNOR DARLING TO CHIEF JUSTICE FORBES.

1827.
8 May.

My dear Judge, Government House, 2nd April, 1827.

The result of the trial for Libel,* which took place last Week, has induced me to think that measures for restraining the Press cannot with safety to the Colony be any longer delayed.

Necessity for
restraint of
press.

That Trial has furnished ample proof, if the Reports in the News Papers be correct, that there are Individuals here, who do not pay much regard to the sacred nature of an Oath. It must, therefore, be difficult, if not impossible, under present Circumstances to identify the Editors with their Papers, while the greatest danger may be apprehended from the scandalous and seditious nature of the Libels and statements they are in the habit of publishing.

The period is now past, which you thought, when I consulted you last, it would be prudent should expire, previous to any steps being taken; and the intemperate tone of the Papers has, increased to a dangerous, if not to an alarming degree, since that time. I shall, therefore, be obliged to you to give the subject further consideration, and let me know how far you feel yourself at liberty to sanction a Bill for carrying into effect the measures, directed by Lord Bathurst in his Despatch, dated the 12th July, 1825. I should then propose having a Bill prepared, and should submit the subject to the Executive Council.

Request for
opinion of
F. Forbes.

I remain, &c.

RA. DARLING.

[Enclosure No. 2.]

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

My dear Sir,

Sydney, 2nd April, 1827.

I shall be quite ready to certify any Ordinance, which you may desire to be prepared and to have laid before me, so far as I am authorized by Law.

Ordinance to
be certified.

I beg to remind Your Excellency that I have now been sitting for upwards of two Months without intermission in the Supreme Court, and I am quite worn out.

Labours of
F. Forbes.

I shall not be able to attend Council after to-morrow, until I have been able to recruit my Health by the only means I have found effectual, Country Air and relaxation from the Arduous business of the Court.

Holiday
required.

I beg to remain, &c.,

F. FORBES.

[Enclosure No. 3.]

GOVERNOR DARLING TO CHIEF JUSTICE FORBES.

Sir,

Government House, 11th April, 1827.

I have the honor, in reference to my Letter of the 2nd inst., marked Private, on the subject of the Press, and to your

1827.
8 May.
Bills submitted
for certificate.

Answer thereto, to transmit the Accompanying Drafts of two Bills, which have been prepared in Conformity with the Instructions contained in Earl Bathurst's Despatch, dated the 12th of July, 1825, which Bills I propose bringing under the Consideration of the Legislative Council with as little delay as possible after they shall have been certified by Your Honor, agreeably to the 4th Geo. 4, Ch. 96, Sec. 29.

I have, &c.,

RA. DARLING.

[Enclosure No. 4.]

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

Sir,

Emu Plains, 12th April, 1827.

Objections to
proposed license
for newspapers.

I have the honor to acknowledge the receipt of your Excellency's Letter of the 11th inst., accompanying the Drafts of two Bills, prepared in Conformity with Instructions from Earl Bathurst. It will be necessary for me to enter into the Legal reasons, which appear to me to be opposed to so much of the Bill, as relates to a previous License for the Press, resumable at Your Excellency's pleasure. But I beg leave to recall to Your Excellency's recollection that many Months have elapsed, since I availed myself of a Private Communication, which Your Excellency made to me of Earl Bathurst's Despatch, dated 12th July, 1825, to state, rather intelligibly, what would be my sentiments in the event of being pressed to give an opinion upon the question, how far a License, as proposed in his Lordship's Despatch, could be considered as reconcilable with the Laws of England. And I then took occasion to suggest the expediency of referring my Letter to his Lordship, together with the measure itself, for further consideration, and eventually perhaps for enactment in the New Bill, which it is understood will come before Parliament during the present Session. I was anxious to avoid setting my Hand solemnly to a Certificate that a measure, recommended by so high an authority as the Secretary of State, is repugnant to Law; and I was equally solicitous to learn what might be the opinion of His Majesty's Law Officers upon a question much too large and momentous to place upon the undivided responsibility of so humble a Functionary in the Administration of the Laws of an Empire as myself. How far Your Excellency may have acted upon my suggestions, Your Excellency can best tell. But, assuming that the matter may have been referred to the Secretary of State, I may be allowed to submit to Your Excellency for consideration how far it may be expedient to re-open it here, until the further sentiments of His Majesty's Government may be known.

To the adoption of so much of the Statute Law of England, as facilitates the proof of Publication in Cases of Libel, and inflicts additional penalties on Conviction of Blasphemous and Seditious Publications, there can be no objection; and I shall be ready to certify such parts of the Bill immediately. But, before I certify my opinion upon the other parts, I beg leave to submit to Your Excellency the doubts I entertain of pressing them to a decision in this stage of the Case.

I have, &c.,

FRANCIS FORBES.

1827.
8 May.

Sections
approved.

[Enclosure No. 5.]

GOVERNOR DARLING TO CHIEF JUSTICE FORBES.

Sir,

Government House, 14th April, 1827.

I have had the honor to receive Your Letter of the 12th inst. on the subject of the proposed Bill respecting the Press.

I recollect perfectly what passed when this subject was formerly discussed; and, had not the Papers persevered in their mischievous endeavours to bring the Government into hatred and Contempt, and in fact succeeded in exciting a strong spirit of discontent amongst the Prisoners, I should not have thought it necessary to agitate the question at the present Moment. It is on these grounds, as stated to you in my Private Letter of the 2nd inst., that I have been induced to bring the matter forward at this time, Considering, as I do, on the most mature reflection, that the safety of the Colony is endangered from the present licentiousness of the Press and that, under this circumstance, it would be inconsistent with my duty to wait the result of the reference, which has been made to His Majesty's Government, and which cannot possibly be received for several Months.

Reasons for
proposed
immediate
action.

It of course rests with Your Honor to judge, as far as you are concerned, whether the proposed Bills are consistent with the Laws of England, *so far as the circumstances of the Colony will admit.*

F. Forbes to
decide on
validity of bill.

As far as I am competent to determine, they appear to be fully justified by present circumstances. That it was the opinion of His Majesty's Government two Years ago, that the state of the Press called for these measures, is evident by the Secretary of State's Instructions to me on leaving England; and I must presume that His Majesty's Ministers acted advisedly in giving those Instructions.

Opinion of
secretary of
state.

The order, as Your Honor is aware, is imperative on me; and, concurring as I do in the expediency of the measure which it directs, I cannot longer abstain from using my best endeavours to carry it into effect. It is my duty. It will be a painful one, if it imposes on you the necessity of an ungracious Act. But

1827.
8 May.

Bills
re-submitted
for certificate.

delay is pregnant with danger, and Private feelings must yield to the exigencies of the times. It therefore only remains for me again to transmit to you the enclosed Bills, in order to their being certified, should you on reflection consider them consistent with the Laws of England under the proviso pointed out in the Act of Parliament; or that I may be distinctly informed of your objections, should you still see reason to decline certifying the Bills.

Reasons
requested for
refusal to
certify.

It appears to me that it will be necessary to my own justification, should these Bills not be passed, that I should be in possession of your reasons for objecting to them;

1st. Considering, as I do, the proposed measure to be highly expedient, in fact essential to the tranquillity, if not to the safety of the Colony which His Majesty has been pleased to entrust to my Government;

2nd. His Majesty's Government having directed these measures which you as Chief Justice are required to sanction; and

3rdly. The Chief Justice of Van Diemen's Land having certified Bills under similar Circumstances, the powers granted by which you are aware exceed those proposed to be vested in the Governor of this Colony, by the Bills now under Consideration.

I have, &c.,

RA. DARLING.

[Enclosure No. 6.]

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

Sir,

Emu Plains, 16th April, 1827.

Instructions to
the governor.

I was absent, when Your Excellency's letter of the 14th instant arrived, or I should have replied to it last evening. With the Instructions given to Your Excellency on leaving England by Earl Bathurst, I, of course, am not acquainted; but, regarding them in the light which Your Excellency does, it would be improper to wish that any Motives of private feeling should induce Your Excellency to defer an Act, which is considered to be of imperative duty. I may appeal to my letter, addressed to Your Excellency some time since with the view of being transmitted to Earl Bathurst, with some confidence to prove the sincerity of my wishes that Your Excellency should be saved from all responsibility for having deferred the proposed bill. The Opinion, which I then entertained and more recently expressed, still remains unchanged, that it would have been better not to press the objectionable parts of the Bill until the further pleasure of His Majesty's Government should be known, and, in the mean time, to have tried the effect of a local Act, framed in Conformity with the English Statutes, and a vigorous enforcement of the laws in being. Of the success of such a Measure, I have

Procedure
proposed by
F. Forbes.

entertained the fullest confidence. The Laws of England have been declared to be sufficient by the ablest Judges in England to restrain the Licentiousness of the Press; they have been found so on the most alarming occasions, and, until their effect be fairly tried here, it were impossible to assume with any thing approaching to conviction that they would not be equally efficacious in this colony, where the jury is composed of Military Officers, appointed by the Governor, and not likely to be influenced by any erroneous notions of the Liberty of the Press. Your Excellency is perfectly aware that up to this moment there has not been a solitary instance of prosecution for libel by His Majesty's Attorney General, although the Safety of the Colony is supposed to be endangered by the licentiousness of the press.

1827.
8 May.

Sufficiency of
the laws in
England.

In compliance with Your Excellency's requisition, I have certified such parts of the two enclosed bills, as it appears to me I can safely do without infringing upon the restrictions imposed by Parliament. The other parts I cannot, as at present advised, of course certify. As the Act does not direct the manner, in which I am required to certify, I must claim the right of exercising my own judgment, and of leaving myself open to better advice, if upon mature consideration, aided by the Opinions of the King's Law Officers in England, it should appear that I entertain an erroneous view of the Duty enjoined upon me by Parliament. This duty I consider as too sacred to be compromised at the requisition of any power on earth; it comes within my private knowledge that, when the measure of confiding so large a discretion as that of legislating to the hands of five individuals was discussed in Parliament, it was distinctly stated by His Majesty's Minister that, in the judgment and honor of a professional judge, there would be found a safe guarantee against any incroachment on the Laws of the land.

Sections
certified, others
withheld.

Duties of
chief justice.

Your Excellency has required of me that, in the event of not certifying the bills, I should distinctly inform you of my reasons for objecting to them, as being necessary to your own justification; but I cannot perceive how the grounds of my opinion upon a nude point of Law can touch the subject of Your Excellency's responsibility. It appears to me that Your Excellency is under a Misapprehension of the duty imposed upon me from observing the particular Words, scored under in Your Excellency's last letter; and as it is of importance to have a clear understanding upon this first principle, I will endeavour to make myself better understood by stating the abstract law and putting a parallel case.

The request
for reasons
of refusal
to certify.

1827.
5 May.

Duties of
chief justice
with regard
to local
ordinances.

The laws of England are the laws of her Colonies (properly such) so far as they can be applied; and, where they cannot, there would be no law to meet the unseen occasions of a distant Colony; legislatures are created with the power of passing local ordinances not repugnant to the Laws of England. This restriction is coeval with the foundations of the first Colonial legislatures, and has been the fertile subject of many decisions and many legal opinions, before this Colony was discovered. Supposing the legislature to have passed the proposed bills, it would still have been open to the Supreme Court to judge of their legality, and its duty to disallow them, if they appeared to be opposed to the Law of England. It was especially to obviate the inconvenience that the particular Clause, which calls upon the Chief Justice to Certify his opinion before any law can be laid before the Council, was introduced into the Act of Parliament. In framing this clause, I have occasion to know that it was thought the first words of limitation, "not repugnant to the Laws of England," were not sufficiently restrictive; and that the second Words, "but consistent with such Laws," were added *ex abundantia*. Your Excellency will perceive that my first duty is to take care that any proposed Law is not repugnant to the law of England *in pari materia*, and then to see that it is nearly consistent with or Conformable to such Law, as the local differences of the parent State and Colony may admit.

This is the view I have always entertained of the Duty imposed upon me; and, in further illustration of its correctness, I will put a parallel case. Supposing that His Majesty, in exercise of his prerogative, had created Courts of justice in this Colony, they must have proceeded according to the Course of Law, and tried all issues of facts by means of Juries. Should such mode of trial have been found inexpedient, it would not, I apprehend, have been competent to the local legislature to have Authorised any different mode of proceeding; recourse must have been had to Parliament. It was to provide against this very difficulty that Parliament passed the New South Wales Act, expressly sanctioning a mode of Trial unknown to the Laws of the realm. And, upon the same principle, it must follow that recourse to Parliament will be the only effectual mode of legalizing an act, which has for its object to restrain an equally recognized constitutional right of a British subject, the right of freely discussing all matters in which his private or public interests are concerned. With the expediency or policy of restraining or extinguishing such right, I have nothing to do. My duty is merely to say whether such be the law of England, and, if it be, whether the proposed bill be repugnant to it or not.

As this subject has already led to protracted discussion. I will not add any thing more at present; but, as I feel it due to Earl Bathurst to state my reasons for not certifying the measure proposed by his Lordship, I must reserve such remarks as appear to me essential to bring under his Lordship's consideration in a more regular manner than I have been able to do in replying to Your Excellency's letters.

I have, &c.,

FRANCIS FORBES.

1827.
8 May.

Reasons to be
submitted to
Earl Bathurst.

[Enclosure No. 7.]

MINUTE OF EXECUTIVE COUNCIL.

No. 32. Executive Council, Wednesday, 11th April, 1827.

Present:—His Excellency the Governor; His Honor The Lieut't Governor; The Venerable The Archdeacon; The Colonial Secretary.

The Minute of the former Proceedings was read and confirmed.

In Consequence of the Licentious state of the Public Press and the violent and inflammatory nature of the various Articles recently Published in the News Papers of the Colony, His Excellency the Governor submitted to the Council the Drafts of two Bills, framed on the Instructions contained in Earl Bathurst's Despatch, No. 5 of the 12th of July, 1825 (brought under Consideration of the Council at its Meeting on the 6th of October last), and which Drafts, meeting with the full Concurrence of the Members of Council present, were recommended to be transmitted to His Honor the Chief Justice in order to their being duly certified.

Approval of
draft bills by
executive
council.

A true Extract:—H. DUMARESQ, Clerk of the Council.

[Enclosure No. 8.]

AN ACT TO REGULATE THE PRESS.

BY His Excellency Lieut't General Ralph Darling, Governor of the Territory of New South Wales and its Dependencies with the advice of the Legislative Council.

Clauses of
draft bill
disallowed by
chief justice.

AN Act to regulate the Printing and Publishing of Newspapers and Papers of a like nature, Printed to be dispensed and made Public, and for the prevention of Blasphemous and Seditious Libels.

WHEREAS matters tending to bring the Government of this Territory and the Administration thereof into hatred and Contempt have been frequently Printed and Published within the said Territory; For prevention whereof and of the mischiefs, which may arise from the Printing and Publishing of News Papers and Papers of a like nature by Persons unknown, and for the prevention of the Printing and Publishing of blasphemous and

1827.
8 May.

Clauses of
draft bill
disallowed by
chief justice.

Seditious Libels, Be it enacted, By His Excellency the Governor of New South Wales and its Dependencies, with the advice of the Legislative Council, That, from and after the..... day of....., No Person shall publish or Cause to be published, within the said Territory or its Dependencies, any Newspaper or other Paper containing Public News or Intelligence, or serving the purpose of a Newspaper, printed within the said Territory, or any of its Dependencies thereof, without having obtained such license to be the Publisher of and to publish the same as is hereinafter mentioned.

II. And be it further enacted, by the authority and with the advice aforesaid, That every such License shall be in Writing, and shall be granted by the Governor or other Person for the time being administering the Government of the Colony, and shall be signed by the Colonial Secretary for the time being, or other person Acting as Colonial Secretary.

III. And be it further enacted, by the Authority and with the Advice aforesaid, that any License to publish any such News Paper or other such Paper as aforesaid be made for and remain in force during such time only not exceeding Twelve Calendar Months from the date thereof, as shall be therein expressed. Provided always that, if any Proprietor or any Printer or publisher of any Newspaper or other such Paper, as aforesaid, shall be Convicted by Verdict or confession or Judgement by default, followed by final judgement or outlawry, of composing, Printing, Publishing, or of causing or procuring to be composed, Printed, or Published, any Blasphemous or Seditious Libel, which shall be Printed or published in the News Paper, or such other Paper as aforesaid, of which he or she shall be a Proprietor, or Printer, or Publisher, then and in every such Case, from and immediately after such conviction and judgement or outlawry, all and every Licenses and License to any Person or Persons to be a Publisher or Publishers of the same News Paper or other such Paper as aforesaid, then subsisting, shall become and be absolutely void.

IV. And be it further enacted, by and with the advise aforesaid, that it shall and may be lawful to and for the Governor or other person for the time being administering the Government of this Territory, by any order to be by him made by and with the advice of the Executive Council, to revoke any License, which shall or may have been granted in manner aforesaid for the publishing of the News Paper or other such paper, as aforesaid, before the expiration of the period, for which the License was granted, the reasons for every such order of revocation being first duly entered on the Minutes of the Council and transmitted for His Majesty's information through one of his Principal

Secretaries of State by the first opportunity; and thereupon such License shall become and be thenceforth absolutely null and void, and every Number or Copy, as well as the then already Printed impression, as also of every other impression of the same News Paper or other such Paper as aforesaid, which shall be published after the License to publish the same shall be so revoked, shall be deemed and taken to be published without License. Provided always that a Copy of such order or revocation, signed by the Clerk for the time being of the said Executive Council, shall be left at the House, at which the News Paper or other such Paper as aforesaid, to which such order shall relate, is Printed, and that Notice of the same order of revocation be publicly given in the most usual manner of publishing Government Orders or Notices:

1827.
5 May.

Clauses of
draft bill
disallowed by
chief justice.

V. And be it further enacted, by the Authority and with the advise aforesaid, that, if any Person shall knowingly and wilfully Publish or Cause to be published, or shall knowingly or wilfully, either as a Proprietor thereof or otherwise, sell, vend or deliver out any News Paper or any other Paper as aforesaid, such License to publish the same, as is required by this Act, not having been first obtained, or after such License, if previously obtained, shall have become forfeited or have been revoked as aforesaid, such Person shall forfeit and lose for every such act done the Sum of over and above all other Fines, forfeitures and penalties.

VI. And be it further enacted, by the Authority and with the Advice aforesaid, that every Person, applying to the Governor or other Person for the time being Administering the Government of the Colony for any such License aforesaid, shall at the same time deliver to the Colonial Secretary, or Acting Colonial Secretary for the time being, at his Office, such Affidavit or Affidavits or Affirmation, as is or are hereinafter required to be delivered to the Said Colonial Secretary, previous to the Printing and publishing of any News Paper or other such Paper as aforesaid.

GOVERNOR DARLING TO EARL BATHURST.

Despatch marked "Separate," per ship Australia.)

My Lord.

Government House, 10th May, 1827.

10 May.

Mr. Dangar, Assistant Surveyor, the subject of my despatch No. 39,* having signified his intention of proceeding to England for the purpose of laying his case before your Lordship, and having requested to be furnished with copies of certain letters which had passed on the subject, I have thought it necessary to put your Lordship in possession of the whole of the

Transmission
of papers re
H. Dangar.

* Note 72.

1827.
10 May.
Transmission
of papers re
H. Dangar.

Documents, and have in consequence the honor to enclose copies herewith, with the exception of the Report of the Land Board, which accompanied my Dispatch above referred to.

I have, &c.,
RA. DARLING.

[Enclosures.]

[*The following letters and papers were enclosed:—*

- Mr. P. McIntyre to Colonial Secretary Macleay, dated — viii. 26; 22, xi, 26; 27, vii, 26.
- Mr. P. McIntyre to Mr. H. Dangar, dated 26, v, 25; 5, vi, 25; 3, vii, 25; 12, vii, 25; 14, vii, 25; 20, vii, 25; 11, vii, 26 (2); 12, vii, 26; 13, vii, 26.
- Mr. H. Dangar to Mr. P. McIntyre, dated 19, vi, 25; 4, vii, 26; 11, vii, 26; 12, vii, 26 (2); 13, vii, 26.
- Mr. P. McIntyre to Surveyor General Oxley, dated 10, v, 25; 20, vii, 26; 22, vii, 26; 25, vii, 26; 29, vii, 26; 1, viii, 26.
- Surveyor General Oxley to Mr. P. McIntyre, dated 12, v, 25; 24, vii, 26; 26, vii, 26; 1, viii, 26.
- Mr. P. McIntyre to Lieut. Col. Dumaresq, dated 31, vii, 26.
- Lieut. Col. Dumaresq to Mr. P. McIntyre, dated 3, viii, 26.
- Colonial Secretary Macleay to Mr. P. McIntyre, dated 5, viii, 26.
- Colonial Secretary Goulburn to Mr. H. Dangar, dated 6, ix, 21.
- Mr. H. Dangar to Surveyor General Oxley, dated 4, ix, 26.
- Surveyor General Oxley to Colonial Secretary Macleay, dated 8, ix, 26; 10, x, 26.
- Mr. H. Dangar to Colonial Secretary Macleay, dated 7, x, 26; 13, x, 26.
- Return Lands claimed by Mr. H. Dangar, dated 10, x, 26.
- Mr. P. McIntyre to Governor Darling, dated 13, x, 26; 8, i, 27.
- Mr. W. Dangar to Governor Darling, dated 28, x, 26.
- Mr. P. McIntyre to Land Board, dated 29, i, 27; 16, ii, 27.
- Surveyor General Oxley to Land Board, dated 17, ii, 27.
- Surveyor General Oxley to Mr. H. Dangar, dated 12, v, 25 (4).
- Mr. P. Cavenagh to Mr. H. Dangar, dated 12, v, 25 (3).
- Mr. P. Cavenagh to Mr. McBrien, dated 12, v, 25.
- Mr. H. Dangar to Land Board, dated 17, ii, 27; 24, ii, 27.
- Colonial Secretary Macleay to Land Board, dated 8, i, 27; 10, i, 27; 22, i, 27.

Copies of these letters will be found in a volume in series II.]

GOVERNOR DARLING TO EARL BATHURST.
(Despatch No. 63, per ship Australia.)

1827.
11 May.

My Lord, Government House, 11th May, 1827.

I have the honor to transmit to Your Lordship, at the desire of the Chief Justice, the accompanying letter, which he has addressed to Your Lordship, enclosing a Statement of his reasons for not certifying certain Clauses of a proposed Law or Ordinance for restraining the freedom of the Press in this Colony.

Transmission
of letter from
F. Forbes.

I shall not trouble Your Lordship in this place with a repetition of the circumstances, which led to the Clauses alluded to having been included with others in a Bill submitted to the Chief Justice, as I have already explained them in my Despatch, No. 62, which I have the honor to forward by this opportunity.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

CHIEF JUSTICE FORBES TO EARL BATHURST.

My Lord, Sydney, 1st May, 1827.

I have the honor to lay before your Lordship the accompanying document, containing my reasons for not certifying certain clauses of a bill prepared by order of the governor, and at variance, as I conceive, with the laws of England.

I am aware that the bill was framed in conformity with instructions from your Lordship. But I felt assured that your Lordship's instructions were intended as a sanction to the Governor to propose such a measure, leaving it to the local authorities to exercise their own judgment as to the propriety of certifying or passing it. Had the bill been submitted for my opinion upon the point of law merely, as required by the act, I should have confined myself to a declaration of my opinion. But, from the peculiarity of the subject and the embarrassing situation, in which I have been placed by circumstances, to which I will only allude, I have felt myself compelled to state my reasons at length; and, if they are urged with more than ordinary earnestness, I trust that your Lordship will therefore excuse it. I feel equally assured that it will not be necessary to guard my opinions by professions of having given them under an impression of duty. Your Lordship's high sense of the integrity, which belongs to the English bench, will predispose your Lordship to attribute the scruples I have felt to the right motive; and, assuming them to be conscientious, your Lordship would be the last to wish my judgment should be influenced. The example set by the Judges of England, and by none more

Reasons for
submitting
explanation.

1827.
11 May.

Powers
delegated to
governor and
council.

remarkably than your Lordship's illustrious Father, has shed its light upon their humble followers: and, if it be necessary to guard that feeling, which keeps the Judgment Seat not only above reproach, but even suspicion, it is especially so in a Colony, so far removed and morally constituted as New South Wales.

Your Lordship will observe that the point at issue is not whether it may be proper or improper to allow a free press in this Colony, but whether Parliament has delegated to the Governor and Council the power of placing it under a licenser; my opinion is that such power can only be lawfully exercised by Parliament. I have stated my opinion in a distinct form, in order that, if your Lordship should deem necessary, it may be laid before His Majesty's law Officers, whose better judgment might remove my doubt, if ill-founded, and serve as a guide to me in future.

I have, &c.,

FRANCIS FORBES, Ch. Justice, New South Wales.

[Enclosure No. 2.]

Reasons for
refusal to
certify certain
clauses in
proposed bill
for restraint
of press.

REASONS assigned by the Chief Justice of New South Wales for not certifying certain clauses of a proposed law or ordinance for restraining the freedom of the press, laid before him by the Governor in pursuance of the New South Wales act.

THE Governor having caused a certain bill or ordinance, containing, amongst other provisions, the clauses hereto annexed,* to be laid before me as Chief Justice for my certificate, in pursuance of the act of Parliament, 4 Geo. 4, Ch. 96, usually stiled the *New South Wales act*, and, it appearing to me that under the restrictions imposed by the act I cannot legally certify such clauses, I feel myself called upon by the importance of the occasion, as well as by the respectful deference, which is due to the authority from which the bill emanated, to explain the reasons upon which my opinion is founded. In order to make those reasons more clearly understood, I will first take a short review of so much of the act as immediately relates to the subject, and endeavour to define the exact limits of the duty imposed upon me. I will then state the substance of the objectionable clauses, and assign my reasons at length.

The 24th section of the act,† after reciting the necessity of entrusting a legislative power *under proper restrictions* to persons residing in New South Wales, enables His Majesty to constitute a council to consist of not more than seven, nor fewer than five persons, with authority to pass local laws or ordinances for the peace, welfare and good government of the Colony, *such laws or ordinances not being repugnant to that act, nor to any*

* Note 73. † Note 74.

charter or order in Council issued in pursuance thereof, nor to the laws of England, but consistent with such laws, so far as the circumstances of the said Colony will admit. The 29th section* further requires that, before any such law or ordinance should be submitted to the Council, a copy thereof should be laid before the Chief Justice of the Supreme Court, and certified by him to the same effect. These clauses require two conditions precedent to the certificate of the Chief Justice—that the proposed law is not repugnant to the laws of England—but that it is as consistent with such laws as local circumstances will admit of its being: if it fail in either of these particulars, the functions of the Chief Justice are at an end. The repugnancy of any two laws is a fact; if one law be repugnant to another law, it is “contrary to, opposed to, inconsistent with” such other law,† and cannot, without a contradiction in terms, be said to be consistent with it under any possible circumstances. But it is not necessary to seek for the intention of the act in a nice definition of words; the best means of interpretation will be found in the general principles of law and in the context of the act. The laws of England are an exhaustless fund of legislative wisdom, from which enough may always be drawn to satisfy the exigencies of a small community; the power of selecting and modifying according to circumstances is committed to the subordinate legislatures of the Colonies; but they are not allowed to alter the fundamental laws of the land. “Allegiance,” it has been held, “must be according to the laws of England, and *ex consequenti* the protection and rule ought to be by the same laws, for they are mutual and reciprocal *unum trahit alterum*.” This great constitutional Principle is deeply laid in the foundations of Colonial legislation.‡ From the communion of laws and institutions are derived those lasting alliances of habits, feelings and sentiments, which form the best safeguard of national allegiance. The New South Wales act was framed in conformity with this great principle of the law. Its obvious policy was to preserve uniformity in the laws of the British empire. It does not delegate to the Governor and Council of New South Wales the same unlimited authority, which belongs to the Parliament of England—they cannot pass any law, which in their opinion the political exigencies of the Colony may require—they are expressly restrained within definite bounds—and, that they may not be led by a misconstruction of their own powers to exceed those bounds, their ordinances must first be submitted to the

1827.
11 May.

Reasons for refusal to certify certain clauses in proposed bill for restraint of press.

* Note 75. † Marginal note.—Johnson in verb. *repugnant*.

‡ Marginal note.—Shower, P.C., 32; Vaughan, 290; Salk, 412; Hobart, 211; 1 Bl. Com., 107.

1827.
11 May.

Reasons for
refusal to
certify certain
clauses in
proposed bill
for restraint
of press.

Chief Justice, who, as a lawyer, is required to certify that such ordinances are not contrary to the spirit of English law; and, supposing them to consist in principle, that their provisions conform to the laws of England, as nearly as obvious circumstances of local difference between the parent state and the Colony will allow. In the exercise of this very delicate function, I have never felt myself at liberty to enter into the policy or expediency of any proposed measure of legislation—that province belongs exclusively to the Governor and Council in subordination only to the paramount laws of England.

The clauses in the bill,* which appear to me to be objectionable, are six in number—in substance, they are as follow—No person shall publish any newspaper or other paper of public intelligence *without first obtaining a license*—such license to be granted *by the Governor* through the Colonial Secretary's office—the license so granted to be in force only for twelve months, and to be forfeited on conviction of any blasphemous or seditious libel—the Governor may, at any time, with the advice of the Executive Council, *revoke such license*, the reasons of such revocation being entered upon the minutes of the Council and transmitted to the Secretary of State.

The above clauses appear to me to be objectionable upon several grounds—first, because the previous restraint, which they impose by means of a license upon printing and publishing, operates as a monopoly upon a common trade, and is repugnant to the freedom of the press as by law established. Secondly, because the discretionary power, vested in the Governor of revoking such license, is repugnant to the principles and practice of English law. Lastly, upon general grounds.

First. By the laws of England,† the right of printing and publishing belongs of common right to all His Majesty's subjects, and may be freely exercised like any other lawful trade or occupation. So far as it becomes an instrument of communicating intelligence and expressing opinion, it is considered a constitutional right, and is now too well established to admit of question that it is one of the privileges of a British subject. The text is comprehensively laid down by Mr. Justice Blackstone as follows:—"The liberty of the press consists in laying no previous *restraint* upon publications, and not in freedom from censure for criminal matter when published. *Every free man has an undoubted right to lay what sentiments he pleases before the public—to forbid this is to destroy the freedom of the press.*" To subject the press to the restrictive power of a *licenser*, as was

* Note 73.

† *Marginal note*.—Bac. Ab. Tit. Monopoly. 1 P. Wms., 183; 11 Rep., 54-56; Godbolt, 253.

formerly done, both before and since the revolution, is to subject all freedom of sentiment to the prejudices of one man, and to make him the arbitrary and infallible judge of all controverted points in learning, religion and government.* In affirmance of this doctrine, the late Lord Ellenborough is reported, in a celebrated case of libel, to have delivered himself in these words—"The law of England is a law of liberty, and, consistently with this liberty, we have not what is called an *imprimatur*, *there is no such preliminary license necessary.*"† In a recent work, of which the great lawyer, whom I have just cited, was pleased to express his approbation, the principle of the law is stated in the following terms:—"There is nothing upon which Englishmen are justly more sensible than upon whatever has the appearance of affecting the liberty of the press. But popular writers have certainly extended the notion of this liberty beyond what in reason it will bear. They have converted it into a native, an original, a primitive right, instead of considering it only as a right derivative and deductive from the joint rights of opinion and of speaking. This, *including an exemption from the control of a licenser, and all previous restraint upon the mere suspicion of abuse*, is the proper notion of the liberty of the press."‡ It were unnecessary to multiply authorities; it is clear that the freedom of the press is a constitutional right of the subject, and that this freedom essentially consists in an entire exemption from previous restraint; all the statutes in force are in accordance with this first principle of law; they facilitate the means of proof; in certain cases, they encrease the measure of punishment; but in no instance do they impose any previous restraint either upon the matter of publication or the person of the publisher. Indeed to admit the power of selection among publishers would be more repugnant to the spirit of the law than to impose a direct *imprimatur*; it would be not merely to confine the right of publishing within partial bounds, but it would be to establish a monopoly in favor of particular principles and opinions, to destroy the press as the privilege of the subject, and to preserve it only as an instrument of government. "The press," continues Blackstone, "can never be used to any *good purpose*, when under the control of an inspector." By the laws of England, then, every free man has the right of using the common trade of printing and publishing newspapers; by the proposed bill, this right is confined to such persons only as the Governor may deem proper. By the laws of England, the liberty of the press is regarded as a constitutional privilege, which liberty consists in

1827.
11 May.

Reasons for refusal to certify certain clauses in proposed bill for restraint of press.

* *Marginal note.*—4 Bl. Com., 151.

† *Marginal note.*—29 St. Tr., 49.

‡ *Marginal note.*—Holt on libel, 59.

1827.
11 May.

Reasons for
refusal to
certify certain
clauses in
proposed bill
for restraint
of press.

exemption from previous restraint; by the proposed bill, a preliminary license is required, which is to destroy the freedom of the press, and to place it at the discretion of the government.

Secondly. By the laws of England, founded in the law of nature, every man enjoys the right of being heard before he can be condemned either in his person or property. There must be some complaint, some tribunal before which he may appear, some examination under the sanction of an oath, some definite course of proceeding, some previously known law, by which he may be adjudged. In the system of licensing adopted by the English statutes, throughout all its extensive ramifications, these first principles of judicial proceeding, however summary the form, are invariably preserved. The licensed publican is summoned before the Magistrate to answer some specific complaint, made against him by some responsible complainant; he is present at the investigation; he examines the witnesses that appear against him, or produces any others in his own behalf; he has a right to be heard, and to offer any matter which he may deem essential to his defence. The clauses under consideration do not contain one of these essential principles; the Governor, with the advice of the Executive Council, may revoke the license granted to any publisher at discretion, and deprive the subject of his trade, without his having the means of knowing what may be the charge against him, who may be his accuser, upon what evidence he is tried, for what violation of the law he is condemned. The Governor and Council may be both complainants and Judges at the same time, and in their own cause—that cause one of political opposition to their own measures, and consequently their own interests, of all others the most likely to enter into their feelings and influence their judgment. In the course of my professional experience, I cannot find a precedent for any proceeding like this; in no instance within my recollection are the accuser and the Judge associated in the same person. On the contrary, for a Judge to determine in his own cause is, by the laws of England, held to be corruption and punished as a misdemeanor.

Thirdly, So far I have looked at the proposed bill within the limits prescribed to me by act of Parliament. I have not felt myself at liberty to enter into considerations of state necessity. I have never been able to persuade myself that Parliament intended to clothe me with a discretionary power of altering the laws of the land; for, if I can certify that the annexed clauses are not repugnant to the laws of England, it is difficult to say what I may not so certify. Assuming, however, for the sake of meeting the question in every shape, that I may have taken too confined a view of the duty imposed upon me, and that I am

bound to admit the political circumstances of the Colony as part of the subject matter, upon which my judgment must be exercised, in any case, even of supposable repugnancy to the laws of England, then I must look at all the circumstances of the Colony in every variety of aspect; and, viewing the proposed clauses on the ground of expediency alone, I think they are open to many serious objections.

1827.
11 May.

Reasons for
refusal to
certify certain
clauses in
proposed bill
for restraint
of press.

In the first place, no case has been made out to establish the necessity of altering the laws already in being with regard to the press. It is a maxim of the English constitution "that no liberty of the subject, either in itself, or in any instrument, by which it may be exercised, shall be repealed, restricted or abridged, unless the Magistrate shall shew, upon his part, a full and sufficient reason for such diminution." That the press of this Colony is licentious may be readily admitted; but that does not prove the necessity of altering the laws. Have the laws for restraining the abuses of the press been put in force in this Colony? It comes within my judicial knowledge that they have not: that no single case of *ex officio* prosecution for libel has been instituted by His Majesty's Attorney General. The laws of England, therefore, have never been tried in New South Wales; and, until they are first tried, it is impossible to say that they are insufficient. They have been declared sufficient by the most experienced lawyers in England; they have proved their sufficiency on the most difficult occasions; and, until they have been first tried in this Colony and found wanting, it would be as illogical to affirm that such laws are ineffectual, as it would be impolitic to exchange an old and tried system for one that is new, untried and problematical.

Again, looking at the objectionable clauses in some of their more prominent bearings—the means that they are intended to employ, and their probable success—so far from correcting the abuses they are meant to remedy, it appears to me that they will materially impede the regular course of Justice. A passing review will establish this position. It is not clearly expressed whether the license shall be demandable of common right, or shall be granted to such persons only, as the Governor may deem fit; the bill must be made a little clearer in this particular, or it might expose the Colonial Secretary to a *mandamus* from the Supreme Court. I will, however, suppose that the clauses are rendered sufficiently explicit, and that the granting of a license is confined in express terms to the discretion of the Governor—a most invidious discretion, the consequences of which cannot have been foreseen. Under what rules, would the Governor exercise this discretion? under what limitations would a license

1827.
11 May.

Reasons for
refusal to
certify certain
clauses in
proposed bill
for restraint
of press.

be granted? within what bounds would discussion of public measures be allowed, the bounds established by law or by the governor? who are to judge of any act of violation? not the Chief Justice, for he may be called upon to try the case. The natural effect of a censorship on the press is in some measure to identify the censor with the publisher; and, by an easy chain of consequences, every person, who may feel aggrieved by any matter contained in a licensed paper, will immediately complain to the Governor and expect his complaint to be redressed. To guard against the charge of favor and partiality, or perhaps participation, the governor must lay down some general rules for his guidance; he must interfere in every private case, or in none; assuming then, as is probable, that the government would interpose its authority in those cases only, which more immediately affected itself, it then becomes at once the accuser, the Judge, and the law. It is not easy to conceive a situation, in which the government could be placed, more embarrassing than this—one more calculated to disturb the unanimity of its councils, or to destroy its reputation with the public. The Governor with the advice of the Executive Council, composed of three or four members of his Government, adopts a particular measure; that measure is deemed impolitic by the people, and is censured by the press; the publisher is accused before the Council; the Council sit in judgment upon their own acts, and decide in their own cause. The necessary consequence of such a decision would be an appeal, not to His Majesty's government, as provided by the Bill, but to the press and popular feeling in England. The Governor and Council in their turn become the accused, under the grossest misrepresentation of acts and motives; and a case, which, if left to the ordinary course, would have been quietly decided with satisfaction to all parties, is transferred to tribunals where truth is out of the question, and justice becomes impossible. There is another material circumstance, which should not be lost sight of in considering this question upon the grounds of expediency. At this moment, a petition is on its way to the King and both houses of Parliament from some of the principal inhabitants, convened at a public meeting, in which the Petitioners take occasion to convey an expression of grateful acknowledgment for the advantages, which they suppose themselves to have derived from the freedom of the press; and, whatever may be the merits of their petition, it will at least be listened to with patience and answered with courtesy. It is even probable that the subject of the press itself may be brought before Parliament in the ensuing discussions on the New South Wales Act. Under such circumstances, the present moment cannot be

deemed the most expedient for passing a local ordinance in opposition to the declared opinion of the people, and possibly at variance with the sentiments of Parliament.

Before I conclude these observations, I must guard myself against being supposed to offer any opinion upon the abstract question, how far, in a mixed population like that of New South Wales, it may be proper to allow the same unrestrained freedom of the press, as by law is established in England. This is an important question; but it is one which I apprehend Parliament only can effectually decide. The duty imposed upon me is sufficiently responsible under the most limited interpretation, and it becomes me to be especially cautious not to extend it by construction.

FRANCIS FORBES,

Ch. Justice, New South Wales.

1st May, 1827.

1827.
11 May.

Reasons for refusal to certify certain clauses in proposed bill for restraint of press.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 64, per ship Australia; acknowledged by right hon. W. Huskisson, 10th November, 1827.)

My Lord, Government House, 12th May, 1827.

12 May.

Having informed Sir John Jamison of the purport of the Orders conveyed to me in Your Lordship's Despatch, No. 64, I have the honor to transmit the enclosed Letter, which he has requested may be forwarded to Your Lordship, with the accompanying attested Copies of Depositions and Statements of the occurrences at Emu Plains.*

Transmission of papers from Sir J. Jamison.

I beg to add that Sir John Jamison has applied to me to order an investigation of the truth of the Documents. But I have declined interfering in the matter, considering it would be highly injudicious at the present moment to renew the discussion of a subject, which has already occasioned so much unpleasant feeling.

I have, &c.,

RA. DARLING.

[Enclosures.]

[Copies of these voluminous papers will be found in the volume of reserved papers.]

GOVERNOR DARLING TO LIEUT.-GENERAL SIR HERBERT TAYLOR.

(Despatch per ship Australia.)

My dear Sir Herbert,

Sydney, 12th May, 1827.

My Aide de Camp, Lieut. de la Condamine, is desirous of retiring from the Service in order that he may be enabled to hold a Civil Appointment, for which I have recommended him to Lord Bathurst. I have only to say it will be a good bargain for

Proposed resignation of T. de la Condamine.

* Note 76.

1827.
12 May.

Government, as he will not be able to draw his Half Pay in consequence of the amount of his Civil Income; therefore, if only on a principle of economy, I hope it will be approved of.

I remain, &c.,

RA. DARLING.

P.S.—As the appointment may not be confirmed by Lord Bathurst, I have dispensed with his application going through the Command'g Officer of his Regiment; but your receiving this will be a proof of its confirmation, as it will be forwarded to you by Mr. Hay only in that ease.

R.D.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 4, per ship Cambridge; acknowledged by Governor Darling, 12th January, 1828.)

13 May.
Shipment
of stores.

Sir,

Downing Street, 13 May, 1827.

I do myself the honour of transmitting to you herewith the Copy of a Letter from the Secretary to the Treasury, addressed to my Under Secretary, on the subject of the various requisitions, which accompanied your letter of the 11th of Septr., 1826. You will perceive by the Communication in question that the necessary steps have been taken for providing and sending out to New South Wales the different Stores, for which you have applied with the exception only of those, which (with reference to the quantity supplied in the course of the last year, and which may not have reached the Colony at the date of your present requisition) can apparently be dispensed with, or which from their durability may not appear necessary to be renewed.

Method for
submitting
requisitions.

I have, however, to call your particular attention to the Observations of the Lords of the Treasury in relation to many of the Articles comprehended in these and former Requisitions, with the request that you will issue strict injunctions to the Officers of your Government, with whom rests the particular duty of preparing these requisitions, to attach to each of them the particulars desired by their Lordships, namely, "the number of persons employed in the several Trades, for whose use the Tools are required; upon what works they are employed; and how the produce of their Labour is disposed of."

Stores for
convict and
colonial
service to be
requisitioned
separately.

As much difficulty and confusion would be avoided, if some uniform arrangement were adopted for furnishing the supplies required for the Service of the Australian Colonies, I take this opportunity of suggesting that a distinction might be beneficially made between those Articles, which may be required for the Convicts, and those which may be necessary for Colonial purposes, the provision of which more regularly falls under the

Colonial Agent. Of this class, the following Articles may be mentioned, vizt. those intended for the Government observatory; for the Surveyor General's Department; for the Trigonometrical Survey; for the Mineralogical Survey; for Stationary, Medicines, Horticultural and Civil Services; for Articles for the Mounted Police and the Body Guard; and for miscellaneous Services. All requisitions for Articles of the above description should be forwarded in the first instance to the Colonial Agent, whose duty it will then be to take the pleasure of the Secretary of State as to the propriety of providing and sending them out to the Colony; but you will take especial care that, in these Requisitions, as well as in those for Articles for the use of the Convicts (which latter will be transmitted as usual direct to the Secretary of State), the fullest information as to the State of the Articles remaining in Store be given in the manner pointed out in the letter of Mr. Herries. And you will also in both cases intimate what Articles, included in former Requisitions, had not reached the Colony at the time of your applying for further Supplies.

1827.
13 May.

Stores for
convict and
colonial
service to be
requisitioned
separately.

I have, &c.,

GODERICH.

[Enclosure.]

MR. J. HERRIES TO UNDER SECRETARY HAY.

Sir,

Treasury Chambers, 3rd April, 1827.

Having laid before The Lords Commissioners of His Majesty's Treasury your Letter of the 15th Instant, transmitting copy of a Despatch from the Governor of New South Wales, accompanied by various Requisitions for Stores, intended for the use of that Government, and signifying Earl Bathurst's request that directions might be given for providing and forwarding to New South Wales the articles required with as little delay as possible;

Stores to be sent
to colony.

I am commanded to acquaint you, for the Information of Earl Bathurst, that My Lords will request the Master General and Board of Ordnance to give directions for providing and sending to New South Wales the Tools, Stores, etc., required by the Requisition, transmitted with your Letter of the 15th Instant, for the following Trades, Vizt.

Carpenters and Joiners, Coopers, Blacksmiths, Brass Founders, Nailors, Bricklayers, Masons, Plasterers, Painters and Glaziers, Plumbers, Sadlers, Farriers, Tailors, Shoemakers; and also for the following Stores, etc. Vizt.

Civil Medicine Department; Clothing, Bedding and Utensils for Convicts; For the Female Factory; For the Government Observatory and Trigonometrical Survey; For the Barrack Department; for Field Equipment; for Miscellaneous Services; For

1827.
13 May.

Stores to be sent
to colony.

Further
information
required with
requisitions.

the Surveyor General's Department; Horticultural; Mineralogical Survey; Clothing for Mounted Police, Guard, etc.; Ordnance Stores.

And My Lords will request the Commissioners of the Navy to provide the Stores for the Dock Yards; and they will direct the Comptroller of the Stationary Office to provide and ship the Stationary.

My Lords cannot, however, refrain from desiring that you will call the attention of Earl Bathurst to this Requisition, with a request that he will inform My Lords whether he is in possession of any Information as to the number of Persons, employed in the several Trades, for whose use these Tools are required, upon what Works they are employed, and how the produce of their Labour is disposed of; and, if he is not in possession of this Information, I am to request that he will instruct the Governor to state these Particulars at the foot of his future Requisitions for Tools and Stores for each of these particular Trades. I am also to request that his Lordship will call the Governor's attention to the circumstance that many of the articles in this and former Requisitions are of an indestructible nature, and calculated to last many years; and, therefore, having been once supplied, it does not appear that they should be renewed. Upon articles of this description, some observation or remark should in future be made of the cause of their being required, and the quantity of articles of each sort remaining in Store at the date of the Requisition should also in future be specified.

I am further to acquaint you, for the Information of Earl Bathurst, that, in transmitting this requisition to the Ordnance Department, My Lords will request them to have reference to the quantity of Stores and Tools, which may have been shipped for this Station in the course of the last year, and which had probably not arrived at the date of the present requisition, in order that they may, if it be practicable, make some reduction in the quantities of Tools, etc., which from their durability may not be likely to require to be renewed.

I am, &c.,

J. C. HERRIES.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 65, per ship Australia; acknowledged by right hon. W. Huskisson, 29th November, 1827.)

My Lord, Government House, 13th May, 1827.

I have the honor to submit to Your Lordship Extracts from the Minutes of Proceedings of the Executive Council in the Cases of William Puckeridge and Edward Holmes, and of

Samuel Chipp and Thomas Stanley, who were convicted of Murder, but have been respited, until His Majesty's pleasure shall be known. And I humbly beg leave to recommend that the Sentence of Death, passed on them, may be Commuted, in the case of Puckeridge and Holmes, to Transportation to Moreton Bay and hard labour in chains for the period of Seven Years, And, in the case of Chipp and Stanley, to Transportation to Norfolk Island and Hard Labour in Chains for the period of their Natural Lives.

1827.
13 May.
Commutation
of death
sentences.

The Minute of Council on the case of Puckeridge and Holmes explains the matter so fully that it is unnecessary for me to add any thing on the Subject.

With respect to Chipp and Stanley, feeling that an example would probably have the effect of preventing the ill treatment of the Natives, I had determined that they should undergo the Sentence of the Law; but the events,* which from time to time interfered to prevent the orders given for their Execution being carried into effect, induced the public at length to take an interest in their fate, and the Council united in recommending them under the circumstances of the Case as objects of Mercy.

I have, &c.,

RA. DARLING.

[Enclosures.]

[*These were minutes of executive council, numbered 28 and 29, and an extract from that numbered 33; copies will be found in a volume in series II.*]

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Australia; acknowledged by right hon.
W. Huskisson, 5th March, 1828.)

Sir,

Government House, 14th May, 1827.

14 May.

I have the honor to acquaint you that the pressing demands of the Service have rendered it necessary for me to authorise the purchase of the brig Governor Philip, for which the Sum of £1,200 has been paid. The circumstance of the Owners of this Vessel not being able to obtain a Register for her has enabled the Government to make the purchase on very advantageous terms. Had I waited until I should have obtained Authority for this purpose, as required by the Treasury Instructions, the opportunity would have been lost, and the Expence of freighting Vessels in the mean time to perform the Service, on which the Governor Philip will be employed, would have been very Considerable, equal I have no doubt, if not greater than the Cost of the Vessel. The pressing and important Nature of the various

Purchase of
brig Governor
Philip.

* Note 77.

1827.
14 May.

Vessels
chartered for
Port Essington
and Western
port.

Impossibility
of awaiting
authority for
expenditure.

Services to be undertaken here, and the time required to communicate with His Majesty's Government, render it impossible to comply with the Instructions without defeating the object they are intended to effect. A Vessel has just now been Chartered, for which £300 is to be paid, to Convey Stores and Provisions for the Settlement to be established at Port Essington.* One was lately sent to Western Port with Supplies, which was taken up at the same rate. According to my Instructions, I should have obtained authority from Home previously to incurring these Expenses, as they exceed £200. Had I waited the result of a reference, the people at Western Port would have been Starved, and the establishment of the Settlement at Port Essington must have been delayed for an indefinite period. You must see how endless the references will be, and what time will be occupied in applying for the necessary Authorities to prevent my being Surcharged. If I am to wait for Authority before I act, it will occasion incalculable embarrassment. Everything will be at a stand. But I shall feel myself bound to do so, in reference to Earl Bathurst's Despatch No. 83/1826, unless the restriction alluded to is removed. I have already taken the liberty to point out the disadvantages, which will be occasioned in the case of Buildings to be erected, or requiring extensive repair. The tranquility and good Order of the Town of Sydney render it necessary that some Watch Houses should be erected. But I should not be justified under the Treasury Instructions in incurring the Expense, until I am Authorised by the Secretary of State, though the Buildings are indispensable. I am unwilling that any Instructions I receive should remain a Dead Letter, and I feel at the same time how injurious it must be to the Public, and the Service in general, to Conform, as I should wish, to those I have now alluded to.

Expense of
communication
with out-
settlements.

Settlements
supplied from
Sydney.

Having adverted to the purchasing and freighting of Vessels, I must beg your attention to the great Expence, which must necessarily be incurred in supplying and keeping up a Communication with the Several Settlements as at present existing, from the widely divided and remote Situations of most of them.

The Settlements are as follows, proceeding hence Northward, and so on round the Coast, Vizt.

Newcastle. 250 convicts employed at the Coal Mines and other Public Establishments, with a Detachment of 40 Soldiers.

Port Macquarie. A Penal Settlement. 750 Prisoners and a Detachment of 80 Soldiers.

Moreton Bay. A Penal Settlement. 300 Prisoners, which are encreasing in Number as the Trials take place, with a Detachment of 70 Soldiers.

* Note 78.

Port Essington. The Expedition will proceed next Week to establish this Settlement. It will consist of a Detachment of 30 Soldiers and 14 Marines and 20 Convict Mechanics and Labourers.

1827.
11 May.

Settlements
supplied from
Sydney.

Melville Island. A Detachment of 40 Soldiers and 53 Convict Mechanics and Labourers.

King George's Sound. A Detachment of 20 Soldiers and 20 Convict Mechanics and labourers.

Western Port.

Ditto

Ditto

Illiwarra. A Detachment of 10 Soldiers with some Constables to assist the Magistrates.

Norfolk Island. A Penal Settlement. 134 Prisoners of the most desperate Character, principally *Respites*, with a Detachment of 60 Soldiers. The Numbers at this time are encreasing.

A Vessel is sent every three Months with Supplies to *Norfolk Island*, which is situated to the Northward and Eastward, the Communication requiring generally between five and Six Weeks.

Periodical
communication
with
settlements.

One is detached to *Port Macquarie* every Month, and another to *Moreton Bay* every two Months. The Communication with the latter generally occupies about four Weeks. These Settlements are on the *Eastern Coast*.

The Settlements on the *Northern Coast* are the projected one at *Port Essington* and that already established at *Melville Island*. The Communication with those Settlements is best effected, when practicable, through Torres Straits between the Months of May and September; but it becomes necessary to Circumnavigate New Holland, which requires nearly three Months. From January to the end of March, it may be accomplished by the Southern and Western Passage, but is not practicable at any other Season and must at all times be tedious and difficult.

Communication
with
settlements in
north Australia.

[Here followed the paragraph quoted in Governor Darling's despatch numbered 60; see page 273.]

I have thought it right to apprise you of the difficulties, which are encountered in effecting this one object alone, I mean supplying the Settlements, not however with any view of complaining either of the trouble or anxiety it necessarily occasions me, as my earnest and anxious desire is to promote the Welfare of the Colony and the objects of His Majesty's Government to the utmost of my power, but that you may be aware that the ordinary restrictive Instructions are not applicable to this Government, and, if enforced, must infallibly injure and protract the advancement of the Colony.

Having pointed out the inconvenience and Expence, which must attend the maintenance of so many Settlements, I would

1827.
14 May.

Possibility
of French
settlement in
Australia.

beg to submit to my lord Bathurst, whether any of them can, consistently with the views of Government, be dispensed with. If it be intended to shut out the French from establishing themselves on the Coast of New Holland, which I conceive is an object of some importance, I am not aware that King George's Sound can be abandoned. The French Corvette *L'Astrolabe*, previous to her late Visit to this, touched both at King George's Sound and Western Port, and remained, I understand, some time at each place. It may, therefore, be presumed they are not altogether indifferent to the subject of settling themselves in this part of the World.

It will be seen by Captain Stirling's report, which accompanies my Despatch No. 56, that they are supposed to have some claim to "Geographe Bay," which is on the South West Coast near to King George's Sound, and not distant from Swan River. The Report also shews that the latter place possesses advantages which, if generally known, would probably attract the French to that spot; and this Circumstance will, I have no doubt, receive due attention when His Majesty's Government may take into consideration the expediency of establishing a Settlement there. It may be useful to point out that its situation, with reference to Port Jackson as regards the difficulty of Communication, is similar to that of King George's Sound; I have, therefore, stated in my Despatch No. 56 that an Establishment to any extent could only be formed at Swan River either from England or India.

I shall not apologise for these lengthened details. They will be useful if they put you in possession, as I trust they will, of the nature and local Situation of the several Settlements and Dependencies with reference to the Seat of Government.

I have, &c.,

RA. DARLING.

Vessels
belonging to
government.

P.S.—I have omitted to state in my Letter that the Vessels belonging to Government are the Brigs *Amity*, *Mary Elizabeth*, and the Governor *Philip*, the Schooners *Isabella* and the *Mermaid*. The latter is permanently attached to the Settlement at Melville Island, as the *Mary Elizabeth* will be to the new Settlement at Port Essington.

R.D.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 66, per ship *Anstralia*; acknowledged by right hon. W. Huskisson, 11th November, 1827.)

15 May.

My Lord, Government House, 15th May, 1827.

Conceiving it may be satisfactory to Your Lordship to be informed of the Number of Convicts actually Victualled and Clothed by the Government, I do myself the honor to forward,

for Your Lordship's information, Copy of a Quarterly Report (which has been established since my arrival), dated the 1st of April last, which shews that the gross Number at the Charge of Government at that date was 4,313, of whom 2,919 were in the immediate service of Government, or employed at the detached Stations, and the remaining Number 1,394 under the immediate Sentence of the Law.

The Prisoners at some of the Government Establishments are still more numerous than I intended; but I have not yet had an opportunity of carrying the arrangements into effect, which I have in Contemplation for their reduction. No time, however, shall be lost in doing so.

I have, &c.,

RA. DARLING.

[Enclosure.]

QUARTERLY RETURN of Crown Prisoners in the employ of Government and at the Penal Settlements, 1st April, 1827.

Return of prisoners employed by government and at penal settlements.

Distribution.		Numbers.
Includes the Mechanics and Labourers employed by the Civil Engineer in the Dock Yard, Commissariat, and all the other Public Departments, and Government Establishments.	Sydney.....	1,051
	Parramatta.....	300
	Liverpool.....	101
	Grose farm and Longbottom.....	32
	Rooty Hill.....	59
	Emu Plains.....	134
	Bathurst.....	213
	Wellington Valley.....	64
	Newcastle.....	266
	Roads and Bridges.....	557
	Melville Island.....	53
	Port Essington.....	17
	Western Port.....	19
	King George's Sound.....	23
Total in the employ of Govt.....		2,919
Penal Settlements	Port Macquarie.....	709
	Moreton Bay.....	195
	Norfolk Island.....	105
Under Judicial Sentence	Hulk.....	89
	Treadmill.....	28
	In Chains on Roads.....	268
General Total.....		4,313

Number of each Country.						Religion.	
Country.	Sentence.					Total.	
	3 yrs.	4 yrs.	7 yrs.	14 yrs.	Life.		
English.....	2	3	893	382	1,016	2,290	Episcopalian..... 2,199
Scotch.....	..	..	46	78	43	167	Presbyterian..... 172
Irish.....	..	..	1,000	180	461	1,641	Roman Catholic.. 1,746
Native.....	3	..	1	..	2	6	Jews..... 46
Foreign.....	1	..	20	3	21	45	Pagan..... 1
Total....	6	3	1,960	643	1,543	4,155	Total..... 4,155

1827.
15 May.

GOVERNOR DARLING TO UNDER SECRETARY HAY.
(Despatch per ship Australia; acknowledged by under secretary Hay, 6th November, 1827.)

Sir,

Government House, 15th May, 1827.

Land grants to
Sir M. Seymour
and E. Hawker.

I wrote to you on the 25th of December last respecting the Grants of Land, ordered to Sir Michael Seymour and Captain Hawker of the Navy; and I hope to receive orders in reply not to Grant Land to any absentee except under very special Circumstances.

Practice of
granting land
to naval
captains.

I take this opportunity of mentioning that it has been the practice to give Land to the Captains of the Navy, who have been employed here on their quitting the Colony. They have invariably applied for it since my arrival; and it would no doubt be taken ill, should this application be rejected without orders to that effect from Home. I, therefore, beg to be honored with Lord Bathurst's sentiments and commands on the subject.

Objections to
land grants
to absentees.

It has been granted, I understand, as an acknowledgement of their Services, the Land being considered of little value; but I am altogether averse from the principle of giving Land to Absentees. The Country may be over-run, but will not be Settled by such proceeding. An Individual for example obtains his Grant; Authorises some Person as Agent to lay out two or three hundred pounds in the purchase of Sheep and Cattle, whom he remunerates by a certain proportion of the increase. A Hut is built for the Stock keeper, and a few Hurdles are put up as a Stock Yard without any intention on the part of the proprietor ever to Settle or improve the Land.

Land reserved
for J. Stirling.

I beg to state that I have authorised Captain Stirling of His Majesty's Ship Success receiving a Reserve of 1,560 Acres on condition of its being Stocked and improved in the Course of 18 Months. I have had the less hesitation in doing this, as he has already exerted himself in the Service of the Colony, and is proceeding to establish a Settlement on the Northern Coast, and has evinced his intention of employing some considerable Capital here by applying to purchase 9,600 Acres, to which I have also acceded. You will see by the accompanying Letter to Lord Bathurst that he is desirous of having charge of the Settlement at Swan River, should it be determined to settle that part of the Country; and I have no doubt that his wishes lead him to become a resident, which is very desirable; and I am glad to perceive that Several of the Military shew the same disposition.

I can only say on the subject of the enclosed Application that Captain Stirling is a very Zealous Officer, and appears to me from his Conduct and Character well qualified for the Situation he is desirous of obtaining.

I have, &c.,

RA. DARLING.

Land to be
purchased by
J. Stirling.

[Enclosure.]

CAPTAIN STIRLING TO EARL BATHURST.

1827.
15 May.

My Lord, H.M.S. Success, Sydney, 15th May, 1827.

The Mail, by which I have at present the honor to address your Lordship, will convey, through the medium of His Excellency General Darling's Report, some important and interesting information relative to the Western Coast of New Holland.

Application for
command of
settlement
proposed at
Swan river.

The Part, which the performance of my duty induced me to take in the Exploration of those Shores, and the successful result of the investigation these effected, emboldens me to apply to your Lordship and to solicit, in the Event of an Establishment being formed on that Territory, the honor of its Superintendence and Government.

In making this application, I feel that I have but little Claim upon Your Lordship's notice. I possess, however, some knowledge of the Country, to which I allude; and I pledge myself, should your Lordship be pleased to consider that knowledge as a recommendation for the Employment, I solicit, to promote with zeal and Industry the Wishes and Views of His Majesty's Government.

My Lord, I have, &c.,

JAMES STIRLING, Captain, R.N.

GOVERNOR DARLING TO LIEUT.-GENERAL SIR HERBERT TAYLOR.
(Despatch per ship Australia.)

Sir, Government House, 15th May, 1827.

I beg most respectfully to submit, for the information of His Royal Highness The Commander in Chief, The Copy of a Despatch, I have done Myself the honor to address to Earl Bathurst, representing the inadequacy of the Force allotted for this Government. It will be recollected that the whole of the 40th Regiment is stationed at Van Diemen's Land; and, as tranquillity has been restored in that Colony since the augmentation of the Garrison, I should be unwilling to expose it to a repetition of the Outrages, it experienced, for such a length of time by withdrawing any part of the Troops.

Inadequacy of
military forces.

40th regiment
stationed in
Tasmania.

The 40th will not require any additional Numbers; but, if the Corps stationed in this Government could be Strengthened by a Couple of Companies each, it would be a most desirable addition to the present force. Officers are required particularly, as will be seen by the Enclosure to the Secretary of State.

I have, &c.,

RA. DARLING, Lt. Genl. Com'g.

[Enclosure.]

[This was a copy of the despatch numbered 61 and dated 5th May, 1827; see page 274.]

1827.
15 May.

GOVERNOR DARLING TO LIEUT.-GENERAL SIR HERBERT TAYLOR.

(Despatch per ship Australia.)

Sir,

Government House, 15th May, 1827.

Sale of
commission by
S. North.

I have the honor to forward a Letter* from Lieutenant North of the New South Wales Royal Veteran Companies, requesting to be allowed to retire from the Service, selling his Commission; and I beg most respectfully to recommend the same to the favorable consideration of His Royal Highness The Commander in Chief.

I have, &c.,

RA. DARLING, Lt. Genl. Comg.

GOVERNOR DARLING TO LIEUT.-GENERAL SIR HERBERT TAYLOR.

(Despatch per ship Australia.)

16 May.

Sir,

Government House, 16th May, 1827.

Request of
T. de la
Condamine
to retire on
half pay.

I have the honor to forward the enclosed application from Lieutenant de la Condamine of the 57th Regiment to be permitted to retire upon the Half Pay of the Army; and I beg respectfully to recommend the same to the favorable consideration of His Royal Highness The Commander in Chief.

I have, &c.,

RA. DARLING, Lt. Genl. Comg.

[Enclosure.]

LIEUTENANT DE LA CONDAMINE TO GOVERNOR DARLING.

Sir,

Sydney, 8th May, 1827.

Being desirous to retire from the Service, I have the honor to request that Your Excellency will be pleased to obtain for me the permission of His Royal Highness The Commander in Chief to retire upon the Half pay of the Army receiving the difference.

Should there, however, be any objection to my retiring upon these terms, I beg to be allowed to do so without receiving any difference.

I have, &c.,

T. DE LA CONDAMINE, Lieut. 57th Regt.,
Aid de Camp.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 67, per ship Australia; acknowledged by right hon. W. Huskisson, 12th November, 1827.)

17 May.

My Lord,

Government House, 17th May, 1827.

Plan of
watch-house
for Sydney.

I have the honor to submit for Your Lordship's Consideration a Plan of a Watch House, on which it is proposed to build such as may be in future required, it being of a Convenient and suitable Construction.

* Note 79.

The Town of Sydney has been laid out with a view to Police Arrangements in eight Wards, And a Watch House is necessary in each Ward. I have in consequence the honor to enclose herewith an Estimate of the Expence to be incurred in building the required Number of Watch Houses; and I beg to be honored with Your Lordship's Authority, the arrangements being necessarily suspended in the mean time and the public Service exposed to great inconvenience.

1827.
17 May.

Watch-houses
required in
Sydney.

I beg to be informed, as Watch Houses will be required in other Situations, whether Your Lordship will approve of them being undertaken without special reference.

I have, &c.,

RA. DARLING.

[Enclosures.]

[A copy of the plan will be found in the volume of charts and plans. The detailed estimates, which amounted to the sum of £1,765 9s. 8d., have been omitted.]

Estimates for
watch-houses.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Champion.)

Sir,

Downing Street, 18th May, 1827.

18 May.

I am directed by Lord Viscount Goderich to transmit to you the enclosed Application from Mr. Cosway, relative to seven Convicts therein named, whose Wives and families the Australian Company are willing to convey out to the Colony free of expense, and thus relieve the Parish, to which they belong, from the burthen of maintaining them, upon the condition that their Husbands are placed "at the disposition of the Company as a part of the Convicts, which by their Charter they are bound to provide for at given periods"; and I am desired at the same time to acquaint you that his Lordship sees no objection to the arrangement, proposed by Mr. Cosway, who has been accordingly informed that an intimation to that effect would be made to you.

Application
from A.A.
company re
convicts and
their families.

I am, &c.,

R. W. HAY.

[Enclosure.]

MR. W. R. COSWAY TO UNDER SECRETARY HAY.

Sir, 13 Lower Beckley St., Portman Sq., 17th May, 1827.

I beg leave to state to you that seven labourers, whose names are underneath, have lately been transported to New South Wales for being connected with the smuggling transactions on the Coast of Kent last Year.

1827.
18 May.

Application
from A.A.
company *re*
convicts and
their families.

These men have left Thirty six Wives and Children chargeable to the Parish, which is now overburthened with the weight of the Poor rates.

The Australian Company are willing to bear some part of the great expence in sending out these Women and Children, provided the Government will order, or, if that be not possible, strongly recommend the Governor of the Colony to place these Seven Convicts at the disposition of the Company, as a part of the Convicts which by their Charter they are bound to provide for at given periods.

I hope, therefore, considering the nature of the case, that the Secretary of State for the Colonies will render the parish his aid and assistance; for, without having the men, the Australian Company will have nothing to do with the Wives and Children, who in such case will remain a dead weight on a district groaning with poor dependant on parish Aid. I have, &c.,

W. R. COSWAY.

Having mentioned the subject to Mr. Hobhouse, Under Secretary of the Home Department, I am authorized by him to say there is no objection to the above request being complied with.

Names of Men transported this Spring from Bilsington Parish in the County of Kent.

Richard F. Higgins, age 30; George Ransley, 45; Paul Pierce, 40; Sam'l Bailey, 39; Charles Giles, 30; T. Denuard, 25; J. Bailey, 43.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 5, per ship Champion; acknowledged by Governor Darling, 1st October, 1827.)

19 May.

Charge for
company of
staff corps.

Sir,

Downing Street, 19th May, 1827.

I do myself the honour of acquainting you that, by a letter received from the Secretary to the Treasury, a Sum amounting to £2,694 16s. 3d. is represented to be due from the Government of New South Wales in respect of the charge of a Company of the Staff Corps, stationed in that Colony, which it was arranged should be defrayed out of the Colonial Revenues; and, as it appears more convenient that the Sum, which may be due on that account, should be paid over to the Military Chest there, than that the amount should be issued by the Agent in this Country, I am to desire that you will give the necessary directions for carrying this arrangement into effect.

I have, &c.,

GODERICH.

GOVERNOR DARLING TO EARL BATHURST.

1827.
19 May.

(Despatch No. 68, per ship Australia; acknowledged by right hon.
W. Huskisson, 30th November, 1827.)

My Lord, Government House, 19th May, 1827.

I have the honor to transmit to Your Lordship Copy of a Petition, which has been presented to me by a person of the Name of Mathew, Complaining of the Proceedings of the Commissioner of the Courts of Requests, together with a Copy of an Affidavit in support of the facts stated in the Petition.

Complaint of
D. D. Mathew
against
commissioner of
court of request.

I referred the Petition, without entering into the Merits of the question, to Mr. Holland, and requested he would afford me the necessary information on the Subject. It appears, however, he does not consider himself amenable to the Government for his Conduct as Commissioner; and he has written a Letter to that effect, of which I have the honor to transmit Your Lordship a Copy.

In the present case, the matter has been carried by the Petitioner into the Supreme Court; and I understand an injunction has been laid on the Commissioner not to proceed in the business.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

THE HUMBLE PETITION

of Daniel Deering Mathew, Esquire,

To His Excellency Lieutenant General Ralph Darling, Governor
and Commander in Chief in and over the Territory of New
South Wales and its Dependencies, etc., etc., etc.,

Petition of
D. D. Mathew
appealing
against
decisions of
commissioner of
court of request.

Most respectfully sheweth,

That Petitioner some time since was Plaintiff in a certain Cause, and also Defendant in two other Causes, which were tried at the Court of Requests in Sydney and decided by Mr. Holland without any oath being administered, and contrary to every principle of Justice, Law and Equity.

That Petitioner, in the January Sitzings of the above Court, was summoned by a person of the name of Dowling before Mr. Commissioner Holland for the sum of £4, being the value of a Boat said to be lost by Petitioner, and also £4 16s. for 32 days rent of such Boat at 3 shillings p. day after the same was lost, making together £8 16s.; and that such Commissioner, without swearing the Plaintiff on the occasion or entering into the merits of the second claim or charge for the hire of such Boat, gave a verdict in the Plaintiff's favor for the whole amount.

1827.
19 May.

Petition of
D. D. Mathew
appealing
against
decisions of
commissioner of
court of request.

That Petitioner's servant lent the above Boat on the same day, that Petitioner borrowed the same, to Charles Pinkstone and James Fiddon, who never returned the same to your Petitioner or his servants. That Petitioner accordingly summoned the two last mentioned persons before Mr. Commissioner Holland, and, although it was not denied by the Defendants but positively proved by an evidence on the part of Petitioner that the Boat was never returned to him by the Defendants, yet Mr. Commissioner Holland gave a verdict in favor of the Defendants. Mr. Allen as Solicitor conducted this Cause without a Fee, as he considered it one of great oppression.

That Petitioner, after having obtained possession of such Boat, caused several Boat Builders to examine the same, who stated that it was not worth repairing, and Petitioner ultimately sold such Boat for ten shillings on account of her Timbers and Planks being completely rotten.

That, upon George Dowling's recovering a verdict against your Petitioner under the before mentioned circumstances in January last and previous to his quitting the Court received from the hands of George Dowling's son a Bill in the handwriting of his Father, purporting to be a claim upon Petitioner for the sum of £12, as due to a William Blue for Ferrying Petitioner from and to the North Shore from the year 1818 to 1822.

That Petitioner, having been summoned by William Blue for the above claim, appeared to such Summons at the Court of Request on Saturday, the 8th instant; and that, on Petitioner's name being called, Mr. Commissioner Holland not only made use of very unwarrantable language to Petitioner in falsely accusing him of having published his Mr. Holland's conduct in the public Prints, but also gave a verdict against your Petitioner without any oath being administered to justify the same, nor would he suffer Petitioner to enter into any defence as to the illegality of the claim for which a Verdict had been given, altho' Petitioner was prepared to prove beyond a doubt that he was not at all indebted to the Plaintiff, William Blue.

That Petitioner has applied to several Professional Gentlemen to conduct his Causes in the above Court, but who have refused either to do so or to go into that Court on account of their dislike to the conduct of Mr. Commissioner Holland; and that Petitioner has also applied to such Gentlemen in order to obtain a redress to his grievances, who have not only informed Petitioner that there is no appeal from the Court of Requests to any other Court, but advised him also as his only resource to Petition your Excellency on the present occasion.

That Petitioner conceives that, independent of the pecuniary loss which he has unjustly sustained, as well as the inconvenience he may hereafter be subjected to by a repetition of similar proceedings, he is bound to make the present application, in justice not only to himself, but also to many Suitors of the Court of Requests, who may not have sufficient knowledge to know when Justice is administered with an even and impartial hand.

1827.
19 May.

Petition of
D. D. Mathew
appealing
against
decisions of
commissioner of
court of request.

Petitioner most humbly Prays that your Excellency will be pleased to direct that His Honor the Chief Justice, or some other proper and impartial person or persons, may be appointed to investigate the conduct of the present Commissioner of the Court of Requests, and that the Cases, before mentioned as having been illegally decided, should be set aside and that the Commissioner should be suspended from committing any further acts of oppression and injustice.

And Petitioner, as in duty bound will ever pray, etc.,

DAN'L DERING MATHEW.

Upper Castlereagh Street, Sydney, 12 Apl., 1827.

[Sub-enclosure No. 1.]

MR. D. D. MATHEW TO COLONIAL SECRETARY MACLEAY.

Sir,

4th May, 1827.

In support of the petition I sent you for the Governor's inspection, I beg leave now to enclose an Affidavit of the conduct of Mr. Commissioner Holland, as stated therein, for His Excellency's perusal, and hope that, as my only remedy, I shall be protected by His Excellency from again paying an unjust debt, which is contrary to the Act of Parliament, passed for holding Courts of Requests in this Colony, as the same Witness in April Sittings Swore that he delivered me a Bill for Twenty Five Pounds, and also that the greater part of this was said by me to be paid. In the Sittings of the present Month, the same evidence was given by the same Witness, and another Verdict of Ten Pounds Sterling given. I am, &c.,

Request for
protection of
governor.

DANL. DERING MATHEW.

[Sub-enclosure No. 2.]

AFFIDAVIT BY MR. D. D. MATHEW.

DANIEL DERING MATHEW of Sydney, Esqr., maketh Oath and Sayeth that, on the third day of May, 1827, a certain cause or Action was tried before Mr. Commissioner Holland in the Court of Requests, in which William Blue was Plaintiff and Daniel

Affidavit by
D. D. Mathew.

1827.
19 May.

Affidavit by
D. D. Mathew.

Dering Mathew Defendant; and that Mr. Commissioner Holland positively refused to allow the said Daniel Dering Mathew to cross-examine the only Witness in support of the claim, made against him by the Plaintiff, and also positively refused to allow the Defendant to swear the Witnesses, he had subpoenaed to rebut the claim, made against him by the Plaintiff; and further that Mr. Commissioner Holland, before the Witness on the part of the Plaintiff left the Box, did give a Verdict for the Sum of Ten Pounds Sterling, which Witness was the same upon whose evidence a Verdict was obtained for the same Sum last Month.

DANIEL DERING MATHEW.

Sworn before me this fourth day of May, 1827:

G. G. MILLS, J.P.

[Enclosure No. 2.]

MR. JAMES HOLLAND TO COLONIAL SECRETARY MACLEAY.

Sir,

30th April, 1825.

Institution of
court of request.

By the 4th Geo. 4, Courts of Civil Jurisdiction to be called Courts of Request are to be instituted in different parts of New South Wales, with full power and authority to hear and determine in a Summary way all Actions, Plaints and Suits for the payment or recovery of any debt, damages or matter, not exceeding ten pounds, and the determination and award of such Courts of Requests, in all cases within the Jurisdiction thereof, should be final, and should be carried into execution by Attachment and Sale of the Goods and Effects, or by Corporal arrest of the party or Parties, against whom such determination or award should be made; and these Courts should be holden by a Commissioner, who shall receive a Salary in lieu of all Fees, Profits or Emoluments whatever, in respect of the office of such Commissioner as aforesaid.

Refusal to give
explanations.

This is the language of the Charter and the Statute, under which I hold my Office; and it would suffer an indignity if an extended accountability was attached to it. I beg to remind you, Sir, that I have made you acquainted with the matter of fact connected with the varied misrepresentations that have appeared in the Newspapers about me. In the administration of Justice, I cannot consent to any impeachment, either in a legal or moral point of view. If this community had that facility, what would become of the Solemnity and authority of my Judicial decisions? which are more extended than any other Persons exercising the functions of a Judge in this Colony—less protected and more liable to misrepresentation, inasmuch as one

or other, on every contested Summons, must be dissatisfied; and I, as a matter of course, take the odium as the Verdict depends on my individual opinion and Judgement.

I have, &c.,

JAMES HOLLAND,

Commissioner of the Courts of Request, New South Wales.

1827.
19 May.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Champion.)

Sir,

Downing Street, 20th May, 1827.

20 May.

Previously to the departure of Major Morisset to assume the duties of the Situation, to which he has been appointed at Norfolk Island, he suggested the great utility, which would result from the employment of the Prisoners there at the Tread Mill. The Agent, however, having been desired to furnish an Estimate of the Expense of providing such a Machine, has reported that the Cost of the same, if made capable of employing thirty men and twenty women, would be Two thousand two hundred and fifty Pounds. Under these circumstances, Lord Goderich has not deemed it advisable to authorize so great an expense to be incurred, and has, therefore, desired me to request that you will take such measures, as you may consider necessary, for supplying the deficiency by substituting some other description of punishment, for that which the Tread Mill was intended to afford.

Refusal to send
treadmill to
Norfolk island.

I have, &c.,

R. W. HAY.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 69, per ship Australia; acknowledged by right hon. W. Huskisson, 8th February, 1828.)

My Lord,

Government House, 21st May, 1827.

21 May.

I have the honor to report to Your Lordship, in reference to my Despatch No. 22, acknowledging the receipt of Instructions relative to the employment of His Majesty's Ship Success in Selecting a Site for a New Settlement on the Northern Coast of this Colony, that Captain Stirling proceeded on the 19th Instant with the necessary Establishment for the purpose pointed out, consisting of a Captain, Assistant Surgeon, and a Detachment of 30 Rank and File of the 39th Regiment, to which *fourteen* of the Royal Marines will be added by Captain Stirling from His Majesty's Ship Success. I have also embarked with the Expedition 20 Convict Mechanics and Labourers, as their Assistance will be necessary in Lodging the Troops and erecting Store Houses for the provisions and other Supplies, which, from

Departure of
expedition for
new settlement
in north
Australia.

1827.
21 May.

the extreme difficulty of Communicating with the Northern Coast, as explained in my letter of the 13th instant to Mr. Hay, must be on rather an extensive Scale.

Brig Mary Elizabeth attached to new settlement.

I have found it necessary to attach to the New Settlement for the present the Mary Elizabeth, a small Brig of 80 Tons, belonging to this Government, in order that a Communication may be kept up with Melville Island, and to afford the means of sending to Timor for Supplies, if necessary; and I have availed myself of the opportunity of a Ship proceeding to India to embark Provisions and Stores, equal to a Nine Months Supply for the Settlement, the Mary Elizabeth not being capable of containing more than was necessary for her own use. The Freight of these Supplies has cost £300.

Ship freighted with supplies.

Commandant appointed.

I have much satisfaction in thinking that Captain Smith of the 39th, whom I have selected as Commandant of the New Settlement, is a person particularly well qualified for the Situation. And I have in consequence impressed him fully with the object, for which the Settlement is to be formed, and the views of His Majesty's Government in this respect.

Instructions to J. Stirling.

I have felt it my duty from the difficulty of access to the Northern Coast from hence during the greater part of the Year to point out to Captain Stirling the necessity of his continuing on that Coast at least, until the Settlement is perfectly established; and I am satisfied he will zealously promote the Service, on which he is employed. I beg Your Lordship's attention to the importance of a small Vessel of War being attached for a time at least to the Settlements on the Northern Coast. It would prove the best means of giving effect to the object by protecting the Traders and keeping the Malays in Check, until they should by experience be made sensible of the advantages, they would derive from their intercourse with our Settlements.

War vessel required on north coast.

I have written to the Naval Commander in Chief in India on the subject; but neither his means nor his Instructions may permit of his exercising any discretion in this respect.

Trade proposed with Malays.

I have felt satisfied that Your Lordship would approve of my directing that Captain Smith should be supplied with such Articles on a limited Scale, as may be necessary to open a Communication with, and conciliate the Malays. I have desired Captain Smith to barter there with the Malays for the Trepang, so that they may at once see the object of the Settlement, and find their interest in promoting it. When the intercourse is permanently established, our Ships touching at the New Settlement could be supplied with this Article for the use of the China Market. As soon as I am informed by Captain Smith what particular Articles are most desired by the Malays, I shall make

Your Lordship acquainted, in order, should Your Lordship approve of the measure, that the necessary Supplies may be sent from time to time from England.

1827.
21 May.

It is of course impossible for me at present to point out where the Settlement will be established. Captain Stirling will proceed in the first instance, as instructed, to Croker's Island, and, as soon as I receive his Report, I shall do myself the honor to inform Your Lordship.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO LIEUT.-GENERAL SIR H. TAYLOR.

(Despatch per ship Australia.)

Sir,

Government House, 22nd May, 1827.

22 May.

It is my duty to report, for the information of the Commander in Chief, that Lieutenant Lowe of the 40th Regiment has been tried by the Civil Power for the murder of an Aboriginal Native, and acquitted.

Trial and
acquittal of
N. Lowe for
murder of
native.

The case as stated was briefly as follows:—

The Native alluded to was represented to have speared a Stockman, employed by a Settler on Hunter's River, who died shortly after. Lieut. Lowe was at that time in the command of the Mounted Police, stationed at Wallis Plains, in the neighbourhood of the place where the event occurred. The Native was apprehended and was delivered into the custody of Lieut. Lowe. It was stated that Lieut. Lowe caused him to be taken out of confinement the next morning, and led to a short distance, where he was shot in the presence of that Officer by a party of Mounted Police.

Every possible exertion was made to come at the fact, but without success. The resident Magistrates were employed, and the Attorney General was afterwards sent to the spot to investigate the matter, but to no effect. At length, the Attorney General obtained some evidence of the man having been shot by Lieut. Lowe's Order and in his presence, and he was put on his Trial in consequence.

I now beg leave to enclose the Sydney Gazette of 21st instant, which I understand contains a correct report of the Trial*; by which it will be perceived that Lieut. Lowe was acquitted of the charge on the ground of the witnesses, who appeared against him, not being entitled to credit.

I have, &c.,

RA. DARLING.

[Enclosure.]

[This was a copy of the issue of the Sydney Gazette dated 21st May, 1827.]

1827.
23 May.

GOVERNOR DARLING TO EARL BATHURST.
(Despatch No. 70, per ship Australia.)

Transmission of
acts of council.

My Lord, Government House, 23rd May, 1827.

I have the honor to forward for His Majesty's Approbation, as directed by the 30th Clause of the 5th Geo. 4, Chap. 96, Copy of five Acts, which have been passed with the Advice of the Legislative Council, Vizt.

[Here followed the titles of the acts Nos. 1 to 5, 8 George IV, as published in the "Public General Statutes of New South Wales." Copies of the acts were enclosed with the despatch.]

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch marked "Separate," per ship Australia; acknowledged by right hon. W. Huskisson, 11th February. 1828.)

24 May.

Information
supplied by
judges to
R. Wardell.

My Lord, New South Wales, 24th May, 1827.

I felt it my duty to represent to Your Lordship in my Separate Letter, dated the 18th of last Month, the fact of the Judges of the Supreme Court being in Communication with the Editor of the "Australian" Newspaper, to the great embarrassment and prejudice of the local Government.

I had on that occasion the honor of transmitting to Your Lordship the "Australian" of the 27th of March, publishing two Articles, which from the information they contain leave no doubt that the particulars had been furnished by the Parties, whose Conduct they so warmly eulogise.

The enclosed Newspaper, the "Australian" of Yesterday,* will satisfy Your Lordship that the same extraordinary and pernicious system is still persevered in.

Complaint of
T. H. Scott
against
J. Stephen.

The explanation of the case is simply as follows. The Archdeacon, considering himself aggrieved by the Conduct of Judge Stephen, who presided at a Trial, in which he was examined as a Witness, transmitted a representation of the matter to me in order to its being forwarded to Your Lordship. I referred the Statement on the 11th of last Month to Mr. Stephen, in order that he might have an opportunity of giving such explanation, as might be necessary for Your Lordship's information.

I found sometime after, by a Letter from the Chief Justice, dated the 24th of last month, that the matter had been placed in his, Mr. Forbes's, hands, and it has lain over without my having been furnished with the explanation required, or hearing anything further on the subject.

The "Australian," which is enclosed, has however put the public in full possession of the Case, though it would fain have

* Note 81.

it believed that the information was from mere rumour. To satisfy Your Lordship the Editor must have been informed of the whole matter, I do myself the honor to transmit a Copy of Archdeacon Scott's representation, by which it will at once be perceived that the Person, who wrote the Article in the Australian, must have had access to that Document, which could only have been afforded (whether directly or indirectly is immaterial) by Mr. Stephen or Mr. Forbes.

The sarcasms on the style of the Archdeacon's "Statement" are alone sufficient to put this beyond all doubt, and the allusion in the latter part of the Article to the Archdeacon's "Wipe" at the legal knowledge of the two Judges, and of his observations respecting the Conduct of Messrs. Lawson and Harris, will furnish further evidence of the Editor's being in possession of the "Statement," if further Evidence be necessary. I can only again appeal to Your Lordship, who will judge what the Consequences must be, when neither the Common ties which bind society together, nor a sense of public duty are sufficient to prevent Communications, even of a Confidential nature, being published to the world.

That they have not been sufficient, the Cases which it has become my painful duty to bring under Your Lordship's notice; the Australian Newspapers of the 27th of March and the 23rd inst., furnish incontestible proof.

I have, &c.,

RA. DARLING.

P.S.—As Your Lordship will by this Communication be put in possession of Archdeacon Scott's representation against Mr. Justice Stephen, though incidentally, I have thought it proper to enclose the Copies of the Reports, which have been prepared by the Acting Attorney General at the desire of the Archdeacon; not knowing the Course which the Judges may pursue, and, in the event of my receiving any Communication from Mr. Stephen on the subject, I shall not fail to forward it for Your Lordship's information.

Report by
W. H. Moore.

[Enclosure No. 1.]

[This was a copy of the issue of the "Australian" newspaper dated 23rd May, 1827.]*

[Enclosure No. 2.]

ARCHDEACON SCOTT TO GOVERNOR DARLING.

Sir,

Sydney, 19th March, 1827.

It is with great reluctance, and only because it regards my Office and my public duty, that I call Your Excellency's attention to a subject of considerable importance.

* Note 81.

1827.
24 May.

Papers given to
Australian
newspaper by
F. Forbes or
J. Stephen.

1827.
24 May.

Complaint of
T. H. Scott
against
judicial conduct
of J. Stephen.

Upon a prosecution of the Parramatta Magistrates by Richard Broadbear and his Wife, who had been Servants at the Female Orphan Institution, I have been informed that, on the first day of the Trial (the 14th Instant), Mr. William Walker, one of the Witnesses for the Plaintiffs and late the Master of that Institution, whose conduct had been before Your Excellency, was permitted in his examination in Chief by Mr. Justice Stephen to enter into a detail of circumstances regarding my public and private character and affairs, and swore to facts which were utterly false, as was proved the day following.

On that day, after my examination in Chief, Mr. Justice Stephen permitted me to be cross examined upon subjects quite irrelevant to the Case before the Court. I consider it a duty I owe to my public office most respectfully to request Your Excellency will be pleased to transmit a Copy of this letter and the enclosed Statement to Earl Bathurst.

And, in order to put both his Lordship and Your Excellency in full possession of the case, I take further leave to request that Your Excellency will call on the Acting Attorney General to furnish you with Copies of the following Reports, and that they also may be transmitted with my statement to Lord Bathurst.

1. A Report of the Proceedings at Parramatta on the Conviction of Richard Broadbear and his Wife, and also in the Supreme Court to which the case was removed by Certiorari.

2. A Report of the two Actions brought before the Supreme Court on the 14, 15 and 16th Instant by Richard Broadbear and his Wife against the Convicting Magistrates for false imprisonment, together with the charges of Mr. Justice Stephen on those trials.

I might here close the subject, but I must openly state to Your Excellency that, since the time when Mr. Walker first questioned my authority as Visitor, in which he received the highest support, that support has been unjustly continued to him in the face of the King's Instructions signified through the Secretary of State, dated 24th December, 1824, and under the Sign Manual of the 15th of July, 1825, and also the Charter of Incorporation dated the 9th of March, 1826, with no other view than to degrade me and to bring the sacred office I hold into contempt in the estimation of the Colony.

I was grossly insulted by two of the Magistrates at Parramatta, and they suffered Mr. Walker to insult me in the face of a full Court of the common people.

The Conviction of these Servants was quashed in direct opposition to an Act of Parliament.

Three out of the Seven Magistrates have been selected, because they were friends of mine, for prosecution, and the foulest obloquy and epithets from Mr. Wentworth have been permitted by the Court to be cast upon us with the same views.

Irrelavent evidence has been permitted and Vindictive damages were given; this was admitted by the Chief Justice on a Motion for a new trial, which however he refused.

Under such treatment and seeing no prospect of any alteration (it having continued for Seventeen Months), I feel it incumbent on me, as due to the Office I hold, most respectfully to lay this matter before His Majesty's Secretary of State for the Colonies through Your Excellency; at the same time, I beg to assure Your Excellency that I most distinctly disclaim anything personal towards Mr. Justice Stephen, nor have I any reason to believe he has any personal feeling of ill will towards me.

I have, &c.,

T. H. SCOTT.

[Enclosure No. 3.]

STATEMENT of the Reverend Archdeacon Scott referred to in his letter to His Excellency Governor Darling, dated 19th March, 1827.

It is painful to me to make any remarks on the Conduct of an Officer of this Government, but I owe it to the station I have the honor to fill to transmit them through the Governor for the consideration of His Majesty's Secretary of State, more particularly as it is a second time connected with this subject that Mr. Justice Stephen has thought proper from the Bench to attempt to degrade me in the estimation of the Colony: first, by his stating, when the Visitor's Authority was argued (and which has been improperly blended with the present), "that all which had occurred had arisen out of a personal dispute between the Archdeacon and Mr. Walker" (this will appear on the late Attorney General's Notes transmitted with that Case), and recently in an Action, brought by Richard Broadbear and his Wife against certain Magistrates at Parramatta for false imprisonment and trial in the Supreme Court on the 14th, 15th and 16th Instant before Mr. Justice Stephen, wherein I was subpœnaed by the Plaintiffs but not examined.

In the course of that trial, the Counsel (Mr. W. C. Wentworth) for the Plaintiffs examined several Witnesses, not only as to some of the Magistrates being influenced to attend by me, but also other Witnesses as to their *Opinions** how far they considered I had used such influence.

* *Marginal note.*—Vide the Evidence of Dr. Harris, Mr. Lawson, Mr. Fulton and Mr. Wm. McArthur.

1827.
24 May.

Persecution of
supporters of
T. H. Scott.

Protest by
T. H. Scott
against judicial
conduct of
J. Stephen.

1827.
24 May.

Protest by
T. H. Scott
against judicial
conduct of
J. Stephen.

My character and affairs both *public* and *private** were also permitted by Mr. Justice Stephen to be examined into most irrelevantly, and upon subjects quite unconnected with this cause. The object of Mr. Wentworth and his real client and prompter, Mr. Wm. Walker, the adviser of and Witness for Broadbear and his Wife, in doing this was too apparent; and, tho' Mr. Justice Stephen said afterwards the Counsel for the Defendant should have stopped it, which in fact *he did attempt*† to do, although he declared his clients would not object to the course, as they were conscious nothing injurious to them could appear, yet I contend that it was the duty of the Judge to have interfered and to have stopped such questions, as they were quite foreign to the case before the Court.

As I was not in the Court that day, I must beg to refer to the Acting Attorney General's Notes of the trial for a more accurate detail.

On the second day, I was subpoenaed and examined by the Defendants to disprove what had been sworn by Mr. Walker, the late Master of the Female Orphan School (who I had good reason to suspend), as to the state of the Children, the general Accounts, the receipt and issues of the provisions, Mr. Walker having sworn he had delivered all his Accounts and Vouchers, whereas he had but lately written a letter‡ to the Trustees of the Church and School Lands, saying he had never kept Accounts of either receipts or disbursements of Money, or receipts and issues of Stores, and that he neither had public papers or Accounts.

I was cross-examined by Mr. W. C. Wentworth, the Plaintiff's Counsel, to the following effect: Whether I had not used my influence over three of the Magistrates to attend and Convict his Clients; whether I was not in partnership with one of them; whether I had *not insulted Mrs. Walker*,§ and used such language as to make her tremble at my name; whether I had not examined in an indelicate manner the bed cloaths of the Girls and their dirty linen; and whether I had not even gone into the Washing Room, where Girls of 14 and 15 Years old were in a state of Nudity, and if from my residence I had not used a Spy Glass to see what was going on at the School.

In this manner, I was suffered by Mr. Justice Stephen to be examined on subjects quite unconnected with the ease for half an hour; and once, when I was asked among other questions

* *Marginal note*.—Vide Mr. Wm. Walker's Evidence. Vide Mr. Wm. McArthur's evidence.

† *Marginal note*.—Vide Mr. Keith's interruption of Walker's first examination and Mr. Justice Stephen's Remarks.

‡ *Marginal note*.—Vide Archdeacon Scott's evidence.

§ *Marginal note*.—Vide Captain Dumaresq's Evidence

as to my private property, if I had not purchased a flock of Sheep, on my appealing to the Judge whether I ought to answer it, although I had no objection to state *for whom and on what occasion they were bought*, he replied "that, as there had been a great deal of irrelevant matter in the whole course of the proceedings, I might or might not answer it." At last he said he would not receive it. I was also examined as to whether I had not used my influence with Governor Darling to delay the publication of the Charter of the Church and School corporation. Nor even here did Mr. Stephen attempt to interpose, for I was asked if it was my opinion I had power as Visitor to inspect this School, for in his (Mr. W. C. Wentworth's) I had not. Upon the Counsel for the Magistrates arising and examining on the subject with a View to rebut the evidence given by some of the Witnesses for the Plaintiffs, Mr. Justice Stephen refused* to let him put questions of the same nature he had permitted from the opposite Counsel, because he said they were irrelevant.

In his charge, Mr. Justice Stephen stated that Walker had sworn those parties "were not employed by Government," whereas, in his examination before the Magistrates, he swore "they were paid by the Colonial Government, and that they were given to assist Mrs. Walker in the Institution"; and, in his evidence in Chief before Mr. Justice Stephen, though he states they were *hired by him*, he nevertheless admits that they received "their first quarter's wages by Warrant from the Government, at the rate of £25 per Annum, and their subsequent quarter's Wages were paid by Government at the rate of £30 per Annum"; and he again states this in his Cross examination. The Governor's Warrant and Broadbear's receipt were also produced; yet on this evidence Mr. Justice Stephen decides they were not the Servants of the Institution.

Mr. Stephen also states that I did not appear before the Magistrates to give evidence on the Conviction of Broadbear and his Wife, and that "this of itself would have vitiated the Conviction." The Act of the 6th Geo. 3, Chap. 25, Sec. 3, expressly states that the Complaint may be made upon Oath by such Master *or by his Steward or agent*." Now the Reverend Mr. Kean, a Chaplain under the King's Warrant, was a Servant or Agent of the Crown in that Institution; and, with regard to the Services of Broadbear, he was employed in cutting Wood, drawing Water, in the Garden, looking after Cows, horses and other Work necessary to such an Institution, and was in fact a

1827.
24 May.

Protest by
T. H. Scott
against judicial
conduct of
J. Stephen.

* *Marginal note*.—Vide Mr. McLeay's evidence, when Mr. Keith interrupted, yet the questions neither to Mr. Walker nor Mr. McArthur were stopped.

1827.
24 May.

Protest by
T. H. Scott
against judicial
conduct of
J. Stephen.

labourer. Both had been convicts and had not long been free, yet their time and sufferings are estimated at Four pounds and ten Shillings per day.

Mr. Stephen states it to be his "painful duty to give it as his opinion that there was a want of probable cause—there was not probable cause for Conviction." It is not for me to argue this point with a lawyer, more particularly against a Judge; but I may be allowed to ask is there no cause for convicting persons, who, being hired by an Agent and paid by his principal for the purpose of being employed in looking after a Number of helpless Children, and in a State of disease, having no other assistance, leave that employment without Notice? In what way could their food be dressed, unless the Man brought the Fuel or water or milk? or in what way could these infants be dressed or attended to but by the Woman?

Mr. Stephen states that he coincides with Chief Justice Forbes, who quashed the Conviction. I can only remark that it will be the opinion of a Chief Justice and Puisne Judge of New South Wales against that of a Chief Justice and three Puisne Judges of the Court of King's Bench in England!

He also states that, on the evidence of Mr. Lawson, the three Defendants came there expressly to give Judgement on that cause. Mr. Lawson with Mr. Harris were on the Bench, when I applied for the Summons, and grossly insulted me, and suffered me to be as grossly insulted by Mr. Walker in language and gesture before the whole Court; but Mr. Stephen takes no notice of other respectable testimony against that opinion.*

T. H. SCOTT.

Sydney, 19th March, 1827.

[Enclosure No. 4.]

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

REPORT of the Proceedings in the ease of Broadbear and Wife against James McArthur and others.

IN consequence of the decision of His Honor the Chief Justice quashing the conviction, which had taken place before the Magistrates at Parramatta, Broadbear and his Wife were induced to bring actions against the Magistrates, who presided on the day they were so convicted. The Magistrates, in consideration of the conviction having been quashed, tendered what they considered a sufficiency as amends of any damage, which might have accrued to Broadbear and his Wife in consequence of their Imprisonment. Such tender not having been accepted and the preliminary proceedings having been gone through, On the 14th day of March, the Action, Broadbear and Wife versus Harris, Esquire, and others, came on to be tried, when Mr. Wentworth for the Plaintiffs first

* *Marginal note.*—Vide the evidence of Mr. Wm. McArthur, the Archdeacon and Mr. McLeay.

entered a *Noli prosequi* against Harris, Lawson, and the two Palmers, continuing the case against the three others, namely Mr. Macarthur, Doctor Bowman, and Mr. Macallister, and then opened the pleadings and proceeded to comment upon the transaction as follows.

1827.
24 May.

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

This (says Mr. Wentworth) is an action of trespass on the case brought by the Plaintiffs, Richard Broadbear and Mary, his Wife. The Declaration sets forth that the Defendants being Justices of the Peace did, on the 6th day of April last at Parramatta, maliciously and without any reasonable or probable cause convict the said Mary for leaving her employment at the Female Orphan School, and caused her to be imprisoned in the House of Correction 'til discharged by order of the Supreme Court upon the proceedings, which were brought up by writ of certiorari, and which were quashed as being illegal: the Damages are laid at £300. To support actions of this nature, which are for malicious convictions before Magistrates, it is necessary there should be a want of probable cause in the proceedings before them to justify the conviction. It is not necessary that any express malice should be proved, because, where want of probable cause is clearly shewn, the fact of malice having existed is an inference of Law. In support of this position, I need only refer to 5 Taunton 579 and 2 Martial 220, in both of which Reports the same case is reported, and the substance in both the same. The present Action is clearly sustainable, if it be shewn that there was no evidence before the Magistrates justifying their conviction, independent of any proof which the Plaintiffs may be able to bring forward of express malice. That this was a malicious proceeding I think obvious from every step, which the Magistrates took throughout the whole of the case. At the time when the conviction was quashed by this Court, it was shewn that a series of the most unaccountable irregularities had taken place throughout; And that in fact not one provision of the Act, under which the Plaintiffs were convicted, had been complied with; That the Complainant, who was the Archdeacon, had not lain his complaint according to Law; and that by his influence he had induced one of the Magistrates (Doctor H.) to issue a Warrant or Summons for these parties without an Oath or any proof that he was their employer; and that in fact all the preliminary proceedings were so manifestly irregular that it was impossible the Magistrates could have been ignorant of their irregularity. It is not, however, with this Act of the Magistrates that I have much to do in the present case. As regards four of them, I have entered a *Noli prosequi*, because they happened to be the regular Bench of Parramatta, and I will, therefore, suppose that they were present in the course of their ordinary duty; and I mention this, as I do not wish it to appear that the Plaintiffs acted invidiously towards the Magistrates. The case, however, as to the other Gentlemen is widely different. With regard to Mr. McAllister, I do not believe that he was a Magistrate for the Colony at the time, when this occurrence took place, although I have been frequently assured to the contrary; there are possibilities of antedating Commissions, and my disbelief of Mr. McAllister then being a Magistrate of the Colony is strengthened from the Public Notice of March the 7th, 1826, whereby he, in conjunction with Mr. Charles Throsby, was Appointed a Magistrate for the District and County of Argyle alone. The reason for making this Gentleman a Defendant to the action is that, on

1827.
24 May.

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

this particular occasion, he was out of his ordinary Jurisdiction; that it was the first and only time he ever sat at Parramatta before or since, and it is scarcely to be supposed that he happened just in the nick of time to be 160 Miles from his ordinary place of abode; that he dropt down upon the Parramatta Bench by mere accident and without any previous solicitation: this is not probable, and I do not believe it was so. The same reason induces me to proceed against the others, for, though they are Magistrates of the Territory, I believe that they never before attended the Parramatta Bench. The first question for you, Gentlemen, assessors in this case, is to consider whether or not there was any probable cause produced before the Magistrates to justify the conviction; and the best way of ascertaining this fact is to examine the proceedings taken before the Bench, which have been brought up by Certiorari, and which I will now read to you.

"Proceedings taken at the Court House, Parramatta, 6th of April, 1826.

"Sitting Magistrates:—John Harris; James McArthur; William Lawson; John Palmer; Geo. T. Palmer; James Bowman; and Lachlan McAllister, Esquires.

"Richard Broadbear and Wife appear to answer the complaint of Archdeacon Scott for leaving their employ at the Female Orphan Institution. The Reverend John E. Keane, Chaplain and Superintendent of the Female Orphan School, States on Oath that the two Defendants were absent from the Orphan Institution on his taking charge on the 30th Ultimo, and have continued absent ever since; from which great confusion and inconvenience has arisen. Deponent orders the Children to bed at 8 O'clock, and assigns a baby to each of the larger Girls in the Institution. That Deponent has found them during the night rolling about in filth. There are about 125 Children in the Institution, and, on Deponent taking charge, he found but one Domestic remaining, Vizt. Mrs. Johnston. Deponent considers himself Chaplain and Superintendent of the Institution. Does not conceive the Servants of the Institution his Servants, as they are to be paid their Wages by Government; considers he could not of himself discharge any Servant of the Institution.

"JOHN ESPIE KEANE, Chn. and Supt.

"The Reverend Mr. Walker states on Oath that he is late Master of the Female Orphan Institution. He left the Institution on the 30th Ultimo. The Defendants were his Servants: they were paid by the Colonial Government. In consequence of his discovering the inefficiency of the bigger Girls in the School, and finding that Mrs. Walker and himself were unable personally to discharge the duties of the School, he made a Report thereof to Major Goulburn and the Revd. Mr. Reddall, and likewise to Sir Thomas Brisbane. At that time, there was not a single Domestic assigned to the Institution. Deponent told Major Goulburn he knew of a couple who were capable of yielding them every assistance.

"*Question by the Court.* Were they paid Quarterly? *Answer.* They were. *Question.* These Persons were Servants to the Institution on the 31st Ultimo, were they not? *Answer.* they were not. *Question.* Up to what period, did you consider them your Servants under the same Agreement at the Institution? *Answer.* Up to the 31st Ultimo. *Question.* Had any notice been given to Government of their leaving? *Answer.* there had by me to His Excellency

General Darling on the 24th Ultimo. I consider Government could not have supplied the place of Mrs. Brodbear with one equal to her in that time. *Question.* Were their names mentioned in your resignation? *Answer.* No, I mentioned their resignation verbally, and conveyed it through Colonel Dumaresq to the Governor. On employing the Defendants, Major Goulburn told Deponent verbally that they might be fed there, but that Government would be answerable for no wages. On Deponent's Application to them to take the situation, they agreed to do so at £25 per Annum; at the same time, they told Deponent that the day Deponent left they would leave also, stating they would not serve under the Government of any other Person than Deponent at such Salary. Deponent communicated the same to Mr. Reddal and Major Goulburn; they made no remarks on Deponent's information; about a Month after they came to the Institution, Major Goulburn and Mr. Reddall visited it; they asked how the Defendants were getting on; Deponent took them into the School Room, and shewed them the progress they had made in curing the Children's heads and in making cloathes for them. Major Goulburn then said, 'Mr. Walker shan't be out of Pocket by them'; and Deponent afterwards drew their Salary from Government under that promise. *Question.* Did you consider them given to Mrs. Walker and yourself merely as Private Servants? *Answer.* I believe they were merely given to assist Mrs. Walker in the Institution. *Question.* When you were aware of the inconvenience that the loss of the Defendants would make, did you exert your influence with them to stop? *Answer.* No. *Question.* In making out the Warrant for the Payment of Servants, were the names of the Defendants included? *Answer.* Yes. *Question.* When did the conversation take place between you and Major Goulburn? *Answer.* About six weeks after the Defendants came to the Institution.

"The Bench do Sentence the Defendants to be Imprisoned in the Gaol at Parramatta as a House of Correction for three Calendar Months.

"True Copy taken from the records of Parramatta Police Office.
"J. HARRIS, J.P."

The whole of this case against the parties was maintained by evidence given on the part of the Archdeacon, for he never condescended to appear, by the Reverend Mr. Keane, who stated that, when he took charge of the School in succession to Mr. Walker, he found those parties absent, and that he did not consider Mr. Walker had a right to discharge any Servants. What evidence, I would ask, was there before the Magistrates to call on the Defendants to make any Defence? There was no proof whatever of any hiring by the Archdeacon, nor that they were his Servants nor the Servants of the Institution; there was not the shadow of a case against them. Under the provisions of the Act of the 6th Geo. 3rd, on which the conviction was grounded; and the Magistrates, if they had conscientiously done their duty, could not have done anything else than dismiss the case altogether. There was nothing to call on the Defendants for their defence; but they did notwithstanding go into a defence. They very naturally called on their late Master, Mr. Walker.

MR. KEITH. I am sorry to be under the necessity to stop the learned Gentleman; but I must inform him that he is wrong. Mr. Walker was called as a Witness against the Plaintiffs.

1827.
24 May.

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

1827.
24 May.

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

MR. WENTWORTH. It is no matter. Mr. Walker did go there to defend them, and he proved that the Defendants expressly engaged with him, and also expressly stipulated to leave the Institution, at whatever period he should leave it; that he considered them his Servants and under an express contract with him, though their wages were paid by Government, but which, if not so paid, he considered himself responsible for. But, admitting that the wages were paid by the Government, did the mere act of paying Wages constitute a hiring? Did it bind down the parties to remain at the Institution for any time? But Mr. Walker expressly went on to specify the nature of his Contract with these people; that he mentioned it to the Committee, who concurred altogether in it without any remark whatever; and that in fact they entered into express stipulations to do that very Act, for which they were afterwards brought before the Magistrates and convicted, namely to leave when Mr. Walker left. I would ask what probable cause was there for such a Conviction? Was there the solitary circumstance upon the whole case, upon which any reasonable mind could justify it; or, even supposing that they were amenable to the act, to shew that they had transgressed its provisions, or, in fact, did any thing more than withdraw from the Institution in the very way they stipulated to do? In the absence, then, of that probable cause, which could only justify this conviction, the inference of the Law was that the Magistrates in so convicting had acted maliciously; and that the three Defendants before the Court had so acted, there was the strongest chain of circumstances in the world to conclude; with regard to Mr. McAllister, within one short Month, or less by a day, after his being appointed a Magistrate, he is found at the distance of 160 Miles from home, and sitting for the first time on the Bench, on the very day when these parties were brought up. It was incumbent on the Jury to look at who this Mr. McAllister was. He, as well as the other Defendants, was the intimate and private friend of the Prosecutor, the Archdeacon; and I have not the least doubt owed his Appointment as a Magistrate either to the influence of the Archdeacon or of Mr. McArthur's family, with whom he was connected as Superintendent over or in a Partnership in some cattle concern. Would any one believe that under those circumstances those Gentlemen were on the Bench on that day by mere accident? I do not pledge myself to prove direct solicitation; but I call on the Jury to look at the facts. How came Mr. McAllister to be there at the very moment, when his Patron or his Friend or his Master, for aught that was known to the contrary, wanted his assistance? Oh! by *accident* it would be said! What brought Doctor Bowman there? What brought Mr. James McArthur there? whose ordinary Jurisdiction was at Cawdor? Was that *accident* too? How opportune! Both these Gentlemen were the intimate friends of the Archdeacon, who was the prosecutor in the case before them; and was it not a little extraordinary that his intimate friends, one living at Sydney and the other at Cawdor, should happen so accidentally to be present? What a rare and fortuitous occurrence! Was it probable that they happened to be present on this occasion without solicitation, direct or indirect? Would it be believed that they did not know that this case was coming on, and went there purposely? If such was their motive for attending, were they, or were any Men, who would so act, fit to be in the Commission of the Peace one moment longer? Did it not smell of a

packed Bench? That such was their motive, however, I will give the Jury still stronger reason to believe, as it will be proved, by the evidence of one of the Magistrates upon the Bench at the time, that these three Gentlemen stood alone in awarding the full measure of Punishment, allotted by the Act; and that they in fact were the operative Men, who decided the case of their venerable friend, and pronounced a decision, which was a scandal to themselves, a scandal to the Colony. If, then, I prove these circumstances, or without proving any of the latter facts upon the direct evidence that, before the Magistrates, there was no probable cause for the conviction that had taken place, I contend that the Plaintiffs are entitled to a verdict in the full amount of the Damages claimed by them. In the Declaration before the Court, no special Damages were set forth; but, I would ask, was there nothing due to a respectable elderly woman put in confinement for 2 Months? Was the loss of character at the time, and the pain and anxiety of mind, she must have felt, nothing? But, say the Defendants, we have tendered you £10. £10! Oh! How I wish that one of them had undergone the imprisonment, which the poor Woman suffered, only ten hours for that Sum! If any thing like liberal compensation had been offered, I, for one, would have advised my Clients to accept of it, and the Man, who says otherwise, does me an injustice. I do not wish, though it has been said I did, for any exposure; but I would say that, when Bailiffs and Underlings were thrust into the Magistracy, it was enough, it should be enough to drive every respectable Man out of it. It had been said on a former occasion, in the case between the Revd. Mr. Walker and the Archdeacon, that the proceedings of the latter towards Mr. Walker throughout were of a vindictive and personal character. What the nature of these proceedings were, I will detail to the Jury; and it will also be shewn that it was in prosecution of that very feeling against Mr. Walker that this proceeding before the Magistrates originated. He knew or thought that the Institution would suffer detriment by the want of those people; but it was from his desire to inflict punishment on an old and faithful servant of Mr. Walker's that these proceedings were instituted. If these people were so clearly amenable to the Act, why was it thought necessary that Mr. Keith should be sent up to prosecute them. From every circumstance that occurred, I am convinced that the Bench that day was a packed Bench, and no independant honest mind could arrive at any other conclusion than that it was so. I have but one observation more to make and that is on the proposal that has been made to let this cause go to a Jury. The Court has heard how that proposal had been met. There were a body of Magistrates proceeded against for an illegal Act, a part of that body, of which the Assessors were also a part. There then was a case of the strongest grounds to infer that, if an *esprit de corps* did exist, it would be exercised. How was the application met? It was refused. The opposite side had heard my observations to the Court on the subject; they had heard the Chief Justice, whilst he expresses a desire to decline disposing of the case from having in some measure pronounced an opinion of it before, intimate that a Jury would be desirable, and request Mr. Keith to consult on the subject with his coadjutor; but no Jury would be granted. I wish to make no implication, directly or indirectly, on the Gentlemen, who have to

1827.
24 May.

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

1827.
24 May.

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

try the case; but I will say it is quite obvious, from the course pursued by the Defendants' Counsel, that they thought they had an advantage in having it tried by them; for what other motives, what other design could they have in thus indecorously, contrary to the opinion which dropped from the Court, contrary to the expressed desire of the Assessors themselves in pressing it on them, but the hope that, being a part of their own body, they would deal more leniently with them than a regular Jury of the Country. I contend that, after the intimation that fell from the Court, it was a most bare and dishonorable transaction; and I sincerely hope, nay I am confident, that the prediction of a Verdict, which these parties had sent forth to the Public, would this day be falsified, when the Court recollected all the circumstances of the case; when they recollected that the Conviction took place by the intimate friends, together with the Bailiff or Partner of the Complainant; when they considered all these facts, so disgraceful to the Colony, where Magistrates could be found to act as these Defendants had acted, I trust that they will publicly mark their detestation of such practices by meting out the full measure of Damages, claimed by the Plaintiffs in the action. I shall now proceed to call my Witnesses.

MR. WILLIAM WALKER, Being sworn and examined, states, that I was some time since Master of the Female Orphan School at Parramatta; the Plaintiffs in the Action were Servants of mine; they hired with me at the rate of £25 a Year, which was afterwards increased to £30; they first asked £40, but, understanding at that time that I was to pay them a Salary out of my own Pocket, they agreed to come to me for £25, observing that they would not serve under the Government of any one else in that Institution for that Sum, and expressly stipulating that they would remain at the Institution no longer than I did. I mentioned to Major Goulburn the necessity that existed to have some female in the Institution to assist Mrs. Walker, who was alone unable to continue the management of so many Children, and told him that I knew a married couple, who were fit for the situation and whom I believed I could engage; Major Goulburn would not make any order for the payment of their Wages, and all he would then allow was their being fed at the institution. I then sent for Broadbear, who was residing upon a small Farm of his own, a few miles from Parramatta, and requested to know from him upon what terms he would engage with me. He first demanded £40 for himself and his Wife per Annum; but, upon my expressly informing him that I was to pay the Wages out of my own Pocket, they agreed to come to the Institution for £25 per Annum. About a Month after this, Major Goulburn and The Revd. Mr. Reddall visited the School, and asked how we got on. I took and shewed him the improvements, which had been effected, and the Clothes which had been made by Mrs. Broadbear; upon which he stated, in the presence of the Plaintiffs, that I should not be out of Pocket by them; and I accordingly took advantage of this remark, and Broadbear and his Wife received their first quarter's Wages by Warrant from the Government at the rate of £25 a Year, and their subsequent Quarter's Wages were paid them by Government at the rate of £30 per Annum, The Plaintiffs being aware of the increase thus made to their Wages, and Mrs. Broadbear always signing the Warrants for herself and her Husband (her Husband not being able to write). I resigned the

situation of Master of the Female Orphan School on account of the general ungentlemanly and uncharitable conduct of the Archdeacon towards me.

1827.
24 May.

MR. KEITH here rose: May it please Your Honor, I feel sorry to interrupt the Witness; but I feel it incumbent on me, as Counsel for the Defendants, to object to this evidence being entered into, inasmuch as it is totally irrelevant to the case and concerning a party not before the Court. I oppose it, however, merely on the ground of its irregularity, and I oppose it on this ground alone, because we do not fear the fullest investigation. We do not fear any statement, which may be made by this or any other Witness; and I shall, therefore, leave it with the Court to act as it seems fit.

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

COURT. The Questions hitherto have not been objectionable; and inasmuch as the party opposing it opposes it on the ground of irregularity alone, and not with a view to preclude such evidence, I see no objection to its proceeding. If it should hereafter appear objectionable, the Court will of course interfere.

MR. WM. WALKER. At the time I tendered my resignation, Colonel Dumaresq advised me not to leave the School; but I stated it was impossible for me to remain after the alarm, which the Archdeacon had occasioned to Mrs. Walker, and after the insults which he had offered to me. I remember the Archdeacon's calling at the Institution, a day or two after his return from the Derwent last Year, in company with Mr. James McArthur and Mr. McAllister. Mrs. Walker and I were at Meals, and one of the Girls of the Institution came with this Message to Mrs. Walker, "that the Archdeacon required the Books of the Institution." Mrs. W. was so alarmed at his very name that she requested me to go with her; and, upon her entrance into the Hall, she, in consequence of his presence, trembled like an aspen leaf, and I was alarmed for the consequences. I do not hesitate to say the Archdeacon's conduct towards me and my Family has been horrible, atrocious and antichristian in the extreme, and likely to occasion me one of the heaviest misfortunes a Husband could sustain. The Archdeacon said, "Mrs. Walker, I want to see the Books of the Institution"; upon which I said to her, you are not to make yourself a Servant; tell one of the girls to bring them here. She retired, and sent the Books; and I first handed to him the Class Registers, from which the progress of the Children might be seen. He then demanded a Journal and Ledger that he had sent from Sydney some Months before; when I told him it was no use his seeing those Books, for nothing had been done in them, having previously informed him that I had not come to the Institution to be a Clerk. If he wanted such Books kept, he might send a Clerk to keep them. He then called for another Book that was designed to shew the daily expenditure and daily receipts of whatever great or little was connected with the Establishment, and which I had paid some attention to, for the purpose of drawing out a systematic plan for conducting that and the other Institution, and the original of which was kept by Mrs. Walker and Mrs. Broadbear. The Archdeacon then asked for the Original Copy, which I held open in both my hands, but which I told him he should not have without the permission of Mrs. Walker; That it was a Book, into which I had not so much as looked myself, because many things were no doubt recorded in it, which were improper for any but a Woman and a Married Woman to look at. I, however, sent up a Message to Mrs. Walker to know whether the Archdeacon

1827.
24 May.

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

might see it; she sent down word by one of the bigger girls, "O no, don't let him see it; nobody ought to see it." I, on receiving this message, told him he should not see the Book, when he took out his pencil and a piece of paper and began to make some Memoranda, calling on the Gentlemen, who were with him, to bear Witness that he was refused the Books; when I said no, Sir, you have been only refused that Book, and you need not burden the Memories of these Gentlemen, for I will bear witness to that fact at any time, or set it down in writing, if you require it. I held the Book in my hand all the time, and turned over to the last leaf to shew that the Accounts were entered up at all events to the day before; just as I made this remark, a Message was brought in to say that Mrs. W. was taken suddenly ill. I then went away, and, for that time, saw no more of the Archdeacon, and cannot say whether he went into any other part of the School. His manner of asking for the Books, his tone of voice, every word he uttered, were calculated to destroy every shadow of authority that I possessed over the Children. In consequence of his gross, scandalous and uncharitable behaviour towards me, Mrs. Walker always trembled at the very mention of his name.

Cross examined. I held the Book in my hand, and thought very often that the Archdeacon was going to seize it. It never came to my knowledge that the Archdeacon visited the school on that occasion by superior authority. If I had, I should not have conducted myself in a different manner than I did, As I consider my conduct towards him far more respectful than the treatment, which I received from him, deserved. I will swear most distinctly that I told the Archdeacon, "Mrs. Walker says that you are not to see this Book, and you shan't see it; but I will shew you the entries have been regularly made up." Although the Archdeacon has treated me in so scandalous and uncharitable a manner, and although he has occasioned Mrs. Walker so much misery, I feel no ill will or dislike towards him. I consider him too much beneath my contempt to possess any such feelings, and I possess no personal enmity towards him. I have always behaved to him in a more respectful manner than he ever did to me, for his conduct has always been gross, scandalous and disgraceful. It was upon the very day the Archdeacon called, as before described, that I sent in my resignation, which I did as I considered myself grossly insulted by him. I do not think that I was called upon as a Witness before the Bench at Parramatta on the part of the Prosecution. I recollect that you (Mr. Keith) put several questions to me; the evidence taken down before the Magistrates at Parramatta and this day read by Mr. Wentworth may be the substance of what was given on the 6th of April last, but is not the whole of the evidence that was given. The conversation, above stated as having taken place between the Archdeacon and me, occurred about four days before I finally left the School. When I was writing my resignation, Mrs. Broadbear came running in and said she would stay no longer than I did. I do not think the Magistrates took the trouble to read the Act cited by Mr. Keith. I told the Magistrates that, if the Plaintiffs had acted wrong, they acted under my authority, and that I was the person, if any, should suffer. Doctor Bowman observed "We wish we could lay hold of you." I stated that Mr. Keith misquoted the Law that day, and that the Act did not apply to the case, when Doctor Bowman interrupted me and asked why I was so presumptuous:

and I replied for the same reason that I would stand an anatomical examination before you or your Superiors. I was aware that Doctor Bowman was a Magistrate, but do not conceive he deserved any better treatment from me, and will not say whether it was a proper treatment to a Magistrate. I had no feeling of ill will or dislike towards either of the three Defendants; and I have no feeling at all against Doctor Bowman for this behaviour. I believe that Broadbear and his Wife would do anything to serve me. I would do anything to serve them. I have not made myself answerable for the Costs of this Suit in case it should go against the Plaintiffs; but I have no hesitation in saying, should it go against them, that I would willingly sell the last Bullock I have to prevent any harm from happening to the Plaintiffs, and I would not, if I could help it, let a hair of either of their heads be injured. I have already stated that, in consequence of the permission of Major Goulburn, the Plaintiffs' wages charged in the Warrant, which Warrants were always signed by Mrs. Broadbear for herself and husband, and that I did not pay them their wages out of my own Pocket; the Plaintiffs were aware that they received their Wages from Government, and that their Wages had been increased from £25 to £30 per Annum. The Archdeacon, a few days before my leaving, said that he was quite satisfied, and had nothing to say against Mrs. Broadbear, but, on the contrary, was so much pleased with her that he had a present of £5 bestowed upon her for her good conduct, although the plaintiffs stated, when they first engaged with me, that they would come for £25 per Annum, because I had to pay it out of my own pocket, and could not afford a greater sum. Yet they made no objection to continue in the situation for the same sum, when they were aware that they were paid by Government and not by me. On the day I sent in my resignation, I verbally requested Colonel Dumaresq to inform the Governor of the intention of Broadbear and his Wife to leave, when I did; And this I did with the view that the Government might procure other persons in their stead, although I was aware that it was not possible for them to procure persons, within the interim of my giving such notice and the Plaintiffs leaving, to fill Mrs. Broadbear's place. I considered them my Servants, and I swear they were my Servants; though I so considered them, I could not have acted so dishonorably as to have sent them from the Institution on my own private business. I consider that they were given to Mrs. Walker to assist her in the Institution.

MR. ROBERT HOWE called and states that the notice in the Sydney Gazette, dated the 7th March, 1826, appointing Laughlin McAllister and Charles Throsby, Esquires, Justices of the Peace for the District of Argyle, came in the usual way to the Office, subscribed by the Colonial Secretary and was inserted by the Authority of Government.

Cross examined. Has not the Original Document received from the Colonial Secretary; does not know what has become of it, but believes it to be destroyed; the mistake as to Mr. McAllister being a Magistrate for the District, if a mistake, cannot have originated in his Office; never received any communication from Government relative to this mistake.

DR. HARRIS called:—I am the Police Magistrate at Parramatta and recollects the business of Broadbear and Wife coming on before a full Bench upon the complaint of the Venerable the Archdeacon.

1827.
24 May.

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

1827.
24 May.
—
Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

I issued a Summons for the appearance of Broadbear and Wife, returnable on the 6th April; no influence on the part of the Archdeacon was used to induce me to issue the Summons. I consider the following Magistrates to compose the regular Bench at Parramatta, Vizt. Messrs. Campbell, Lawson, Walker, G. Palmer, T. Palmer, and myself. I don't recollect seeing Dr. Bowman or Mr. McAllister on the Parramatta Bench previous to the 6th of April last, nor have since seen them there. Cannot say what induced the three Defendants to have sat on that day. Cannot say that it was to try the case of Broadbear and Wife. I am always obliged and happy to see Brother Magistrates. I did consider, in consequence of what Mr. Keith said, that the 6 Geo. 3, Chap. 25, applied to the Colony, and that Broadbear and Wife came within the meaning of the Act. If the same came before me to-morrow, I would decide in the same manner. *Question by Mr. Wentworth.* What although you know this Court has ruled that your decision was wrong? *Answer.* I know of no such decision. I believed and do still believe that Broadbear and Wife were Servants to Government, notwithstanding Mr. Walker's Statement to the contrary. I believed and do still believe that they deserved punishment, as I conceived their conduct very improper.

Cross examined. Mr. McArthur might have been there as a Complainant; but I cannot recollect whether the fruit case came on that day. It is not at all singular for Magistrates other than the regular Bench at times to attend the Parramatta Bench.

WM. LAWSON, Esqr., Examined:—I am one of the Parramatta Bench; do not consider the three Defendants belonging to that District. I understood that, in the case of Broadbear and Wife, the Archdeacon was Complainant. I was one of the presiding Magistrates the day they were convicted. I was satisfied the then Defendants, now Plaintiffs, had been guilty of the offence charged against them. I was satisfied and still believe that they were Government Servants, and that they deserved to be punished. I have heard and believe that the three Defendants are the intimate friends of the Archdeacon. I do not know much of any of them myself. It certainly struck me as very singular that they should be there. I thought they came for that case. The Defendants were for awarding the highest punishment.

Cross Examined. Does think it very extraordinary that the Defendants sat on that case. I thought so at the time. It is not since I read the Statement in the Australian that I first began to consider their attendance strange. I cannot say what brought them there, nor whether they were packed. If the act applies, I certainly consider the Plaintiffs Government Servants and that they deserve to be punished. After the defence was closed, Dr. Harris as Chairman passed a paper round for each of the Magistrates to give their opinion. Dr. Harris and Mr. Palmer were for One Month's Imprisonment, myself and Mr. J. Palmer for two Months, and the three Defendants for three Months. I do not think from this circumstance that the proper punishment to be awarded the Defendants would have been for six weeks; each of the Magistrates signed the Warrant for three Months Imprisonment.

Re-examined. Mr. Walker stated before the Bench that the Plaintiffs stipulated to remain only as long as he did.

MR. T. FULTON examined:—I am Clerk to the Bench of Magistrates at Parramatta. I have held such situation for three years, and during that time have never seen Mr. James McArthur to sit

as Magistrate but once before the 6th of April, and that was a case of Horse Stealing in which his cousin Hannibal McArthur was the Complainant. Dr. Bowman sat once only during that period, and Mr. McAllister never but on this occasion. I, at the first coming in of the Magistrates, thought nothing of the matter, but afterwards concurred in the universal opinion that it was extraordinary they should come and sit on that particular case. I have no doubt they are the particular and private friends of the Archdeacon, and, as far as private opinion goes, think they were there by his solicitation.

1827.
24 May.

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

Mr. KEITH. Is this Evidence?

Cross Examined. My reasons for thinking they came to try that particular case arise from some unusual harsh treatment. I met with on that occasion; a kind of suspicion was imputed to me by those Gentlemen that I was not taking the evidence down fairly. This harsh treatment has not given rise to any ill will. I have no dislike towards either of the Gentlemen. I never inserted Mr. McArthur's name as a presiding Magistrate, when he did not preside; such an accusation is false. I am aware that some such imputation has been cast upon me by Mr. McArthur, but the knowledge of this has not caused me in any way to be influenced against Mr. McArthur. The Defendants did not remain after Broadbear's case was decided. I cannot recollect whether any other cases were taken after Broadbear's. I do not distinctly recollect whether the first case that came on that day preceded Broadbear's or whether Mr. James McArthur appeared as Complainant. I rather think that, in the fruit case, Mr. James McArthur acted as Magistrate.

Mr. WM. McARTHUR Examined:—I was at Camden, when the investigation of Broadbear's case came on before the Magistrates. I am on terms of intimacy with the Archdeacon. I know Dr. Bowman, Mr. McAllister and my Brother, Mr. James McArthur, to be intimate with the Archdeacon. I am certain the Archdeacon did not directly or indirectly solicit the attendance of the Defendants on the Parramatta Bench. Mr. McAllister is neither Bailiff nor Superintendent to any person. He possesses an Estate of 6,000 Acres of Land adjoining my Brother's and my Property. There is a Herd of Horned Cattle grazing on these Lands, for which Mr. McAllister receives a per Centage upon the increase. Mr. McAllister is not in Partnership with the Archdeacon or Mr. McArthur; has a Flock of Sheep of the Archdeacon's under his care, upon the ordinary terms of receiving a proportion of the increase. These Sheep were not in the Colony at the time of Broadbear's business coming before the Magistrates. There was no connection whatever between the Archdeacon and Mr. McAllister at that time.

Being asked by Mr. Wentworth whether he had heard his Brother Mr. James McArthur say anything respecting Broadbear's business, and, when Mr. McArthur was about to answer, Mr. Wentworth stopped him. Mr. Wentworth, however, asked him whether he had heard Mr. McAllister say anything respecting it, and, upon discovering that what he had said tended to Mr. McAllister's favor he endeavoured to prevent Witness from stating, but Mr. Keith insisted that, as Mr. Wentworth had put the question, though it was not evidence, the witness ought to be allowed to answer; the Court acquiescing, Mr. McArthur said that, since this business of Broadbear's, I have heard Mr. McAllister give as his reason for sitting on the Bench on that day was that, having gone into the

1827.
24 May.

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

Court accidentally, he thought it right to see the course of business. He was desirous of information upon this head, being about to act in a part of the Colony where the Magistrates had but little practice. I have had no conversation with Dr. Bowman respecting this business.

Cross Examined. I know that my Brother James has repeatedly attended at the Parramatta Bench. I am sure, from my knowledge of the Defendants and of the Archdeacon, that they would spurn the idea of going to preside as Magistrates, pre-determined to judge any case; and I am sure that the Defendants would not have allowed themselves to have been solicited, nor would the Archdeacon have solicited them.

Here Mr. Wentworth closed the case for the Plaintiffs, and, by the request of the Court, the defence was adjourned until the following day, Vizt. March 15th, when MR. KEITH addressed the Court in behalf of the Defendants.

The present is a case of the greatest importance, not only to the Defendants and Plaintiffs, but also to the Public at large, as the decision of this day will greatly tend either to do away with the vile imputations that had been so thickly laid on the Magistracy, or cause the people (already decidedly opposed to look with a favourable eye upon that respectable body) to consider it composed of any thing but what it ought to be; and, looking at it in that light, I am only sorry that the Defence has not a better advocate, tho' I do trust and feel assured that no failure of mine in defending my Clients will be allowed by you, Gentlemen, to injure a cause, which truly requires no foreign aid to uphold it. In considering Mr. W.'s opening address, I shall first comment upon that part, with which he concluded his, Vizt. the request he made to submit this cause to a Trial by Jury. When that request was first made to me and Mr. Moore, as Counsel for the Defendants, it was at a time when it was impossible to have any communication with either of the Defendants, except Mr. McArthur. In justice to that Gentleman, I feel it necessary distinctly to declare that, as soon as I mentioned this subject to him, he unequivocally declared he did not care whether it were or were not tried by a Jury; but we had not an opportunity of having any communication with the other Defendants, and besides, Gentlemen, we, as Counsel for the Defendants, did not feel inclined to grant the request made, and one strong reason for my not consenting is that the names of these very Defendants have in a certain Newspaper been held up as having acted improperly on this very case; and, therefore, consider that no Jury could be had, but who would be more or less biassed; and I must say, though with reluctance, that I do not believe my Clients would have a fair trial at the hands of a Jury. I beg leave to remind the other side that we are never actuated by other persons' feelings, but our sense of propriety alone; and I do really think he takes too much upon himself to lay down what ought to be our opinions or conduct, and the only excuse I can make for his very improper expressions, when he said that it was disreputable, dishonorable and highly indecorous in us, as Counsel, to refuse a Jury, particularly after what had dropped from the Chief Justice, is that it might have been said in the heat of passion; but I must inform that Gentleman that no Mr. Wentworth nor no Judge shall ever interfere with me in conducting a cause; I never will submit to any person, whoever or whatever he may be, directing me in my

conduct as an Advocate; and I here throw back upon the other side such expressions, and state that our conduct was not and never has been either disreputable, dishonourable or indecorous; and I must add that it was anything but fair, the very reverse, the highest degree of indecorum in that Gentleman's making use of such expressions against us, and particularly against one (Mr. Moore), whom he must know would be the last in the World to act in any other way than with the highest honor, and whose very name is a passport through the Colony for every thing that is esteemed and respected among men.

MR. WENTWORTH. Really I must intercept you, Sir. I deny that I made use of any allusion towards Mr. Moore or you either. I should be very sorry to have done so; my allusion was to the Defendants, and I repeat that the line of conduct they pursued was disreputable.

MR. KEITH. I am satisfied as to this explanation respecting ourselves; and I will now proceed to comment upon that part of the case, which has reference to the Character of a Gentleman, not before the Court, on which I conceive a most shameful, gross and barefaced attack has been made, as well could; the learned Counsel on the other side has disavowed that he brought this case forward for the purpose of injuring or holding up to ridicule the Magistrates, and when he stated *that those* or that person, who said so, injured him, I was aware to whom he alluded; and, for the purpose of shewing the character of the amiable Mr. Walker in its true light, I beg leave to inform Mr. Wentworth that I was aware to whom he alluded when he said "that he, who stated he had brought this action for his own purposes, injured him." He alluded to me; I had a conversation with Mr. Walker at Liverpool upon this case, when he expressed his wish that it could be settled without coming into Court; that he wished a larger Sum had been tendered. I replied you know very well that, if a greater Sum had been tendered, it would not have been accepted, inasmuch as it is the wish of those concerned to bring, if possible, the conduct of the Magistrates into disrepute; this he must have repeated, and must I suppose have hinted to Mr. Wentworth that he was intended; but, if he had possessed the least foresight, he would very easily have perceived by my manner that it was him I alluded to, and not Mr. Wentworth; for I did then believe, and I do now most firmly believe, that this Walker is the actual prosecutor in this cause; that it is to serve his own immediate views that he has urged the Plaintiffs on to carry through the Case; and I do feel that he must be very much interested in the event of this suit. With respect to the charges made against the Character of the Archdeacon, I must not omit to bring to your recollection, Gentlemen, the vile epithets, which this *disinterested Witness* Walker used in speaking of him. The Character of the Archdeacon must be known to all in Court. His situation in life, his rank, his public character ought to place him above the breath of calumny; but, above all, his private character ought at least to have induced Mr. Walker to pause ere he expressed himself in the terms he did; must he not feel that these expressions, used with so much fervor, must tend to disprove in every respectable mind his denial of having any feelings of ill will or desire to injure the Archdeacon. The Archdeacon, he says, is below his contempt. All I will say to this is that, when the Archdeacon truly becomes below the

1827.
24 May.

Report of
proceedings
in Broadbent
and wife v.
Macarthur, J.,
and ors.

1827.
24 May.

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

contempt of Mr. Walker, he will indeed be beneath the contempt of any Person, no matter how low or how vile that Person may be. The Archdeacon's character, I am well aware, cannot in any way be injured in the minds of respectable men, but in such a Country as this where, whatever may be said to the contrary, vice rears her head without a blush. It is not only necessary that respectable Men should feel a reverence for and be satisfied with the known integrity of the Archdeacon. It is necessary for the well being of the great mass of the population that it should feel convinced of the uprightness of the Archdeacon's character; and I shall, therefore, feel called upon to rebut by evidence the testimony given on the part of Mr. Walker, although I here admit that such evidence is irrelevant to the case before you. But I shall press this, inasmuch as that irrelevant evidence has been allowed, and the only inducement which the other side could have had in producing it, was to raise a feeling of disrespect in the minds of the people against all constituted authority; and, if the most direct denial of Walker's evidence will do away with such impressions, it will be given. And the minds of the people will not go astray, and Walker's vile purposes will be defeated. With regard to the assertions and imputations, with which the Defendants have been assailed in the opening address, not one tittle of evidence has been adduced, which can in the slightest degree go to shew that the Defendants were predetermined to convict the Plaintiffs; that they were packed either by themselves or others; or that they had received solicitations from any person to sit upon the case in question. For the Defendants, I throw back their foul aspersions in the teeth of those, from whom they proceed. These Gentlemen are all known to you, known to you I believe in their private characters as Men, in their public characters as Magistrates. If so, you must be aware that they could have had no inducement to have acted in the manner it is wished to be made appear. On the contrary, that they would have spurned the very idea; they would have hooted the man, who could have dared to offer such a request; the fact of the matter is that Mr. James MacArthur was a Complainant at the Police Office on the Morning, Broadbear's case came on; but he does not wish to cover himself under this cloak; he does not fear to state that he knew Broadbear's case was coming on; that he had been at the Orphan School and had seen the distressed state of its inmates, in consequence of the inhuman conduct of the Plaintiffs, and, knowing this, he feels he would have broken his Oath of Office, had he not been present on the investigation of a case, in which he conceived (and properly conceived) that the prosperity of the Institution in a great measure depended. Dr. Bowman was at Parramatta on public duty; Dr. Anderson was that day to succeed Mr. Allan, who had proceeded to Windsor, and Dr. Bowman visited Parramatta that day with the purpose of introducing Dr. Anderson to his several duties in that Town. In his professional capacity as Principal Surgeon, he visited the Orphan School, which he found in a most distressing state on account of the want of proper assistance; with these facts before him, as a Magistrate of the Territory, I ask you whether he would not have swerved from his duty, had he not been present on the investigation. Is a Magistrate not bound to give every assistance to bring offenders against the Laws to punishment. And surely none here will pretend to assert that the conduct of Mrs. Broadbear was not

inhuman, was not indecent, cruel, was not also criminal! As to Mr. McAllister, he felt he was a Magistrate; he had been newly appointed. This case was one of importance; he naturally conceived he would learn something by attending its investigation. As a Magistrate who had lately been Appointed, it could be no offence in him, where he first presided. It has come out in Plaintiffs' evidence that his reasons for attending this case were purely a wish to see how matters were conducted. It is admitted on all sides that this case was one of consequence, and it was but natural that a newly made Magistrate should conceive that, in a case of importance, he might learn something; but you, Gentlemen, must recollect that this came out in the Plaintiffs' case. It is, therefore, his, the Plaintiffs' Statement, and ought to be so considered. But it has been said that Mr. McAllister was the Bailiff of the Complainant, in partnership with, and that he must have been there by solicitation. These Assertions are false. He is not in Partnership with, nor is he the Bailiff of the Archdeacon. At the time of this business, he had no connection with the Archdeacon. It was not until a Month after at least that the Archdeacon entertained the idea of purchasing Sheep; and it was not until he had actually purchased, as has been shewn by the Plaintiffs' own evidence, that Mr. McAllister had anything to do with the Archdeacon, save and except that he was intimate with the Archdeacon, a situation on account of which he does, and did, I have no doubt, feel honored, as all who have any knowledge of the Archdeacon would; and it is only envy that gives rise to these expressions. But, Gentlemen, what advantage could arise to either of these Defendants to act from the motives attributed to them, attributed by one person too, who, if he really feel what he has stated he did feel, ought to have been the last to have agreed in punishing the plaintiffs, ought to have been the last with such feelings to have signed the Warrant for the full punishment: I mean Mr. Lawson; but I really think that the feelings, which he has described, could not have had place in his breast at the time of the conviction. And I dare say, upon recollection, he will feel that such an opinion must have taken possession of him after he had read a paragraph in a certain Newspaper. But to the inducement. The Archdeacon could have had no possible wish to punish these Plaintiffs, as it is in evidence from the other side too that the Archdeacon, up to the time of the plaintiffs leaving in the shameful manner they did, had a high opinion of Mrs. Broadbear, and, so pleased was he with her behaviour, that he caused a present of Five Pounds to be granted to her: and what pleasure could it possibly give to the three Defendants to cause the Plaintiffs to be incarcerated in a Gaol for three Months? None. On the contrary, I am satisfied, and I think you must be, ought to be, that nothing, but the sense that public justice required a severe example in order to deter others from conducting themselves in a like manner, could have induced the Defendants to have awarded the punishment they did. Yes, there was another feeling, which pervaded the breasts of these Defendants, VIZt. the horrible inhumanity of a Woman leaving 125 Children without any, the slightest assistance; among whom there were 15 helpless infants, and few or none of the others capable of caring for themselves, and this to satisfy the revenge of a Man, who calls himself a Christian—More, a Christian Minister, and who this day vilely endeavours to asperse a Man, who is indeed a

1827.
24 May.

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

1827.
24 May.

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

Christian, for uncharitable, scandalous and disgusting treatment. Now, Gentlemen, I will put it to you fairly, is there any the slightest evidence, which in any way tends to make it appear that these Defendants acted from malice; and, if not, why the aspersions which were cast upon their characters, why make assertions, which could not be proved? A short time after I came to the Colony, I defeuded a Woman in this Court for conspiracy. On her information that she had proof that she had been very ill used by Mr. Throsby, a Magistrate, I stated it to the Jury; but, upon calling her evidence, they failed to prove her Statement, and I received a severe reprimand from this Court for attacking the character of a Magistrate so well known as Mr. Throsby. The Defeudants are as well known as that Gentleman; they are Magistrates of as high standing, and yet it is allowed that their characters should be aspersed without proof, for I do most strongly contend that no evidence has been adduced, which can in any manner bring home the slightest ground for impeaching their integrity. These accusations are foul and unjust in the extreme, and they smell of the sod, from which they have arisen. Who I again ask, who and what is Mrs. Broadbear that these Defendants could so far debase themselves, could stoop to such lowness, could debase themselves to become the vilest of the vile. No, Gentlemen, No; on such evidences, on such pretended evidence, for really there is none, you will not, you cannot come to the conclusion aimed at by the other party. You will feel with me that they have acted honorably throughout; that no motives of malice entered their minds; that, if they have erred, they erred in judgement and not in heart. I will only add one further inducement, which led the Defendants to sanction the punishment awarded, which is this:—Many of the Children of the Institution are, though very young, still of sufficient years to cause deep impressions to be indelibly marked upon their minds; such impressions are generally the largest. Now they were aware of the manner, in which Mrs. Broadbear left the School; they knew she is free; they are being brought up to much the same situations as Mrs. Broadbear filled. If, therefore, this conduct of Mrs. Broadbear should have been overlooked, what would have been the impressions formed in these young minds? What benefit would talking of doing right have effected. Would not these Children have come to the conclusion that, if they were punished for an offence, such treatment would be partiality; or would they not have conceived that what was an offence in a child was none in a grown person and that all instruction would hereafter go for nothing. But, Gentlemen, I must now advert to the evidence, which has been given by Mr. Walker. What is it? He states that, when he took possession of the Orphan School as Master, there was no Domestic, and that he found it impossible to do without some assistance; that he, therefore, spoke to Major Goulburn, to whom he communicated that he thought he could procure a married couple, who would suit; that Major Goulburn refused to pay them any Wages, but agreed to their being fed at the cost of Government. Now this very conversation distinctly proves that Mr. Walker's feelings at this time must have been that he required the sanction of Government before he could engage these parties. Now, Major Goulburn did sanction these engagements by allowing them to be fed. Broadbear, upon being requested to come, feels that he is not requested as the private servant of Mr. Walker, For he says that he will come for £40 per

Annum; upon, however, being informed that Mr. Walker is to pay them out of his own purse, he agrees to come for £25 per Annum; but he annexes this singular condition that they will serve under no other Man's Government save Mr. Walker. Is this condition credible. Mr. Walker has been inducted but a short time as Master. Broadbear was aware of this circumstance; he could not, as is admitted, have at that time imagined it likely that Mr. Walker would soon leave the Institution; would have left it in the manner he did; and it could be only under the idea that Mr. Walker would leave it, as he did, that they could have annexed such a condition could they have foreseen what has taken place? and if not without such a condition would they not, upon giving a quarter's notice, have had the benefit, which arises from such a condition, without naming such condition. Take these circumstances into your consideration, and you will feel, I think, with me that the Magistrates at Parramatta did right, when they excluded from their belief that particular Contract in consequence of its improbability, and that they were right in concluding these persons were Government Servants. Inasmuch as they were aware they were such, they were aware they were paid by Government; that they had hired at so much per Annum, being paid quarterly; and that they the Plaintiffs must have known that it was their duty to give notice of their intention to quit. But, Gentlemen, look at that particular question, which was put to Mr. Walker, vizt. whether he considered Broadbear and Wife *given* to him as Private Servants? and his answer that he considered *them given* to assist Mrs. Walker in the Institution? and, though he here allows they were *given* to him, he still to cover their guilt persists in claiming them as his own Servants. I would ask him what is the meaning of the word "*given*." I must likewise beg your attention to the admission he makes that he could not *act so dishonorably*, as to have sent these Persons any distance on his own immediate affairs. What! tho' they were *his* private Servants, not send them on his own affairs? What! is it dishonorable for a Man to send his Servants, where he pleases? Now, Gentlemen, look at this and see whether you can come to any other conclusion, save and except that this express stipulation, which has been attempted to be pressed (and which without effect was attempted to be pressed upon the Magistrates), never was entered into, never entered into either of these parties imaginations, until Mr. Walker thought it would be serviceable to his cause. His cause, Yes, Gentlemen, his cause, for such you by this time see who is the real Plaintiff in this case? Not Broadbear and Wife, but Mr. Walker; look at all his evidence; consider the manner, in which it was given. Consider how shamefully he has forced in his own pretended calamities; bring to your recollection the expressions he has used, and yet in the face of them has dared to swear that he has no ill will to any of these parties. A Man, who would swear this, will I am convinced swear anything; but has he not proved his Interest in this cause, and will you not well and deeply weigh every particle of such evidence; and will you not, ought you not, must you not dismiss entirely from your minds everything he says in favor of those Plaintiffs, particularly when he admits that he was the cause of their acting as they did, an admission which ought to damn every particle of his evidence, which weighs in their favor, for who so likely to hatch up a story available for the Plaintiffs as the Person,

1827.
24 May.

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

1827.
24 May.

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

who has induced them to do that, for which they deserved the punishment they received, as the person who calls himself a Christian and yet glorys in having induced the Committal of an Act, which would make a savage much less a Christian shudder. Now I am sure you must discredit this pretended agreement or Contract, and I will, therefore, now proceed to offer a few observations on the judgement, which quashed this Conviction, and beg it to be understood that the remarks, I am about to offer, are made with the greatest deference. I do not wish it to be imagined that I am going to attempt to clash with the Chief Justice's Judgement. No, but, Gentlemen, I must beg to refer your attention to that decision, to the wording of the 6th Geo. 3rd, Chap. 25, and to a decision of Lord Ellenborough in the case of Lowther v. Earl of Radnor et al. on the 20th Geo. 2, chap. 19. Now, then, Gentlemen, supposing the 6 Geo. 3, chap. 25, to apply to the Colony, for the decision admits that there may be doubts on that head, and, if this Court have doubts, you will not punish Magistrates for those doubts or because they truly believed that there could be, ought to be no doubts: but, supposing it to apply to the Colony, look at the extensive meaning of the words "and others"; what could a Man not trained up to the technicalities of the Law consider came within the meaning of those words; would he ever imagine that, under that extensive term, nothing more was meant than that the Act should apply to trades of a similar description to those described; or would he not more likely come to the conclusion that, under that extensive term "*and others*," all classes of an inferior description to the classes, particularly named in the Act, would be within its meaning. I think he would; and dismiss from your minds the decision of His Honor Judge Forbes, which did not exist at the time Broadbear's case came on, and couple with what I have stated the opinion given by Lord Ellenborough in the case before named, and where the expression is more narrowed than in my case, where he says that, unless these words "other Labourers" means to comprehend a different description of persons from those before particularly mentioned, it is difficult to account for their insertion at all: but, applying them to "other Labourers" *in any other trade or business*, the sense will be perfect. But it may be said that, if such an extensive Construction be put on these last words of the sentence, the former part, specifying certain trades, becomes nugatory. That, however, will not follow: for "Artificers etc." do not necessarily or properly fall under the denomination of labourers, there being, as I take it, a known distinction between a journeyman in any art or mystery or other Workman employed in the different branches of it, and a Labourer. And, if the intention of the Legislature was to have had the Act apply to similar persons to those particularly mentioned, could they not have, instead of using the words "and others," have used the term "and such like": and does not the circumstance of their commencing the Act with the name of Artificers, that trade among those enumerated in the Act considered to be higher in rank than the others, go strongly to prove that the meaning of the words "and others" meant to include in it every class below those particularly named, and none above them; and are not menial Servants below Artificers. Then, viewing it in this light, is it extraordinary, without the decision of the Chief Justice (for you must always bear in mind that this decision was not then known), will it appear at all strange that

these should have come to the conclusion they did? I am sure, Gentlemen, that you will see you might have come to the same decision; and, because you do not see a Law in the same light that another does, is that a reason why you are to be punished? Then, Gentlemen, if you feel with me, you will allow that there was probable cause, and, if there was probable cause, I am sure you are satisfied there was no malice, and that the tender by the Magistrates is quite sufficient. I know it to be a fact that this decision of Lord Ellenborough was taken into consideration by some of the Magistrates, who convicted these Plaintiffs, and you ought, therefore, to look at that decision, and see, whether without the decision of the Chief Justice, the Magistrates might not have been led to think differently from Judge Forbes, not having been used so much to distinguish terms as he has. If, as the conviction being quashed, they must admit they erred in judgement, will you not feel that, to persons in the state of life of the Plaintiffs, the tender made is amply sufficient; and can you conscientiously give a larger Sum to those, who were satisfied with £25 per Annum, the tender being at the rate of £60 per Annum. Gentlemen, I shall only now trouble you to inform you that I mean to call again upon Mr. Walker once more to state what he did yesterday, and I do it to let him know that it will be refuted. I shall then call the Archdeacon, who will inform you whether Mr. Walker's statements be correct, and whether he ever directly or indirectly solicited the Defendants, or either of them, to attend on Broadbear's case; and, inasmuch as the general public character of the Defendants have been so grossly assailed, I will call Witnesses to disprove these assertions, not to prove that they are not bad characters, for their private characters stand in no need of Witnesses, but, as public characters, it is only fair the public should be informed on how high ground they stand.

In taking into your consideration the question of probable cause, which is a mixed question of Law and fact, you can, I conceive, only consider the quashing the conviction an after work; you must look at the evidence, such as it was given before the Magistrates, and determine from that whether, supposing the act to apply and the parties to come within its meaning, there was probable cause; and further consider whether the quashing the conviction does not make such conviction an error in Judgement only; and, if such be the case, whether the tender be not sufficient? I am sorry to have so long detained you, and, in concluding, shall only add that I hope no omissions of mine, no want of eloquence in me will cause you to imagine that the fault lies in the cause but attribute it to the Advocate.

THE REVD. WM. WALKER was then again called, and examined as to what he had stated respecting the conduct of the Archdeacon. In this second account (being aware that the Archdeacon was about to be examined as a Witness), he omitted many of the scandalous expressions, which, in his first examination, he made use of. And he admitted that the pay List of Servants at the Female Orphan School of the 31st June, 1825, was of his hand writing.

WILLIAM LAWSON Esqr. was also examined and repeated in substance what he stated yesterday. Mr. Lawson denied that his opinions were formed in consequence of a paragraph in the Australian of the 15th of April, 1826, which was put into his hands.

1827.
24 May.

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

1827.
24 May.

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

THE VENERABLE THE ARCHDEACON was next called, And States:— I never directly or otherwise requested the attendance of the Defendants at Parramatta upon the case, in which he complained against Broadbear and his Wife; that I was well acquainted with the Characters of the Gentlemen; and I was satisfied that, even if they were requested to do so, they would most decidedly have refused to act in any way towards a perversion of Justice by attending. Mr. McAllister was never my partner in any Sheep concern; he has at present undertaken to manage a number of Sheep, which I have lately had from Van Diemen's Land; but, at the time this transaction took place, I never had nor contemplated having anything to do with Sheep. I remember visiting the Orphan School at Parramatta in company with Mr. James McArthur and Mr. McAllister, I think on the 23rd of March, 1826. It was on the day after I returned from Van Diemen's Land, and after I had intimated to His Excellency my intention to do so. I think His Excellency requested I would visit the institution; but I then stated that, from the character of the Master and my visits having been before misrepresented, I did not wish to go without a Witness; my intention was to call on Captain Dunaresq and request that Gentleman to accompany me, when I happened to meet Mr. James McArthur and Mr. McAllister, who went with me. I cannot recollect who I saw first at the School; but remember asking to see Mrs. Walker, not choosing to have anything to do with Mr. Walker. I think I sent my compliments to her, and, if I recollect rightly, she came down and brought the Book with her or went upstairs to procure it, but did not return. Mr. Walker came at the same time with Mrs. Walker and was very insolent, both in posture and language. I took no notice of him, but again requested to see Mrs. Walker, when he sent some Message from himself desiring her not to come down. I never used the slightest word towards Mrs. Walker, of which she could complain. I never acted towards her in such a way as to make her tremble at my very name. I never was in the habit of ordering her about in an ungentlemanly manner. I would have been ashamed to do so. I remember perfectly well taking out my pencil and desiring the Gentlemen, who were with me, to bear witness, as I never could get any Accounts from Mr. Walker, nor have any of the Accounts for provisions or expenditure been yet rendered. I am King's Visitor of all the Schools in the Colony, and, as such, think it comes within my authority to visit the Orphan Institution. I always considered Mrs. Broadbear as a Servant of the Institution. I complained to the Magistrates as King's Visitor that the School had been left by those Persons without assistance, and that the Children were in a state of disease, upon which a Summons was granted. I had no ill feeling towards Mrs. Broadbear; on the contrary I had been so pleased with her conduct that I had procured her a remission or present of Five Pounds. I have never directly or indirectly insulted Mr. Walker. I never treated him with disrespect; he, on the contrary, has behaved to me, not only in a disrespectful, but in an insulting manner. I have received a Letter from him, the contents of which are grossly insulting to me. The state of the Female Orphan School, in consequence of the premature departure of Mrs. Broadbear, was particularly distressing. She had the management of the Children; gave no notice when she left, Whereby Mr. Keane, who succeeded Mr. Walker, was obliged to cause the bigger girls (hardly

themselves able to take care of themselves) to take charge of the Infants. I did all I could to procure Servants in the room of Mrs. Broadbear. I am sure, that if Mrs. Walker were here, she could not, she would not say otherwise than that I had ever treated her in the most respectful manner. It is not in my nature to use a female otherwise. I have never been brought up in Company, in which any treatment but that of respect to Females would be tolerated. I distinctly swear that I never did knowingly give cause to Mrs. Walker to tremble at my name, nor did I ever remark or believe that she did so. I did and do still firmly believe that Mrs. Broadbear left at the instigation of Mr. Walker. I always considered her a Servant of the Institution; she used to carry the Keys, and, when I called, shewed me the Apartments. Mrs. Broadbear acted as Nurse and Housekeeper. When Mr. and Mrs. Keane took charge of the Institution, Mrs. Keane was in very ill health and incapable of affording any assistance to the Children. Mrs. Broadbear's departure consequently placed the School in the most distressing difficulties.

Cross Examined. I cannot state distinctly whether I was or was not sworn, when I made the Complaint. I rather suppose I was, as it is usual. I remember signing a paper, but cannot positively recollect whether I was sworn. I did not appear in Court the day they were Convicted. I cannot say whether the Defendants knew the case was coming on that day; they did not hear it from me. I never solicited them or either of them, directly or indirectly, to attend. I saw the three Defendants that day in company with a number of other Gentlemen, and will swear positively that no conversation whatever took place on the subject. Dr. Bowman was at that time going his usual rounds, and visited the institution either on that day or the day before medically, and I believe made a written report on it to the Governor. He informed me he found it in a most disgraceful state. I have no partnership with any one of them. Mr. McAllister has some Sheep, I bought, to take care of; they were bought long after this affair in May. I have no objection to state *for whom and on what occasion they were bought*, if the Judge thinks it necessary.

MR. JUSTICE STEPHEN said, there had been a great deal of irrelevant matter and that Witness might or might not (and afterwards said he would not receive it).

I did not employ Mr. Keith to attend at Parramatta to prosecute the Plaintiffs. I always considered my conduct to Mrs. Walker particularly mild, and never remember using a harsh word to Mr. Walker except on one occasion, when, in consequence of some improper language he made use of, I said I would suspend him. I think the conduct of the institution is vested in me as King's Visitor. I believe there is a clause in the letters patent constituting me Visitor over that School. I never sent any message to Mr. Walker about Shooting his dogs. I might have sent to desire he would move them; there was a Goat, which somebody said belonged to him, that was sent away to the Pound; my residence was at that time opposite the Orphan School on the other side of the river. I was never in the habit of watching what was done there through a Spy Glass. Indeed, though I had a Spy Glass, I never took it out of its place, until going on my visitation in the interior, it was proposed taking it with us. I had no necessity to look through my Spy Glass, as I could at all times, if I wished, see

1827.
24 May.

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

1827.
24 May.

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

what was doing at the School itself upon going there. I conceive the nature of my duty at that Institution was to report anything I might see amiss. My Instructions are to visit the Schools once a Year, or oftener if practicable; enough was seen at that Institution to make very frequent visits necessary, and in proof of this I need only remark that, since Mrs. Walker has left the School, I have frequently overheard the Children laughing at the Arch Devil's prayers. It was the Evening Service I read every Sunday, and when they were asked, who told them to make use of such expressions, they have answered that it was Mrs. Walker told them what had been read were the prayers of *the Arch Devil*. It was certainly my duty to examine into the cleanliness of the Institution, which was a subject the present Governor was very anxious about; the children were greatly infected with the itch; the place swarmed with bugs, and was very dirty; the School was in a disgraceful state and required great attention. I might have turned down some of the girls' beds. I never did inspect the foul linen, nor did I ever receive any opposition from Mr. Walker in looking at the beds and linen. I never went through a room, when some of the girls were washing themselves and in a State of nudity; but, if I had, I should have considered it my duty particularly, if I saw anything wrong going on; there were no girls of 14 or 15 years old in the Institution at that time; there might have been some 12 Years old; and I most assuredly would think it part of my duty to go into a room where they were undressed, taking with me either the Master or Mistress, if I thought it necessary. I ever considered Broadbear and his Wife Servants of the Institution. I did not give the Magistrates to understand that they contracted for any specific time. I used no undue influence nor get any influence to make Dr. Harris issue a Summons against the parties. I merely stated the circumstances to him, upon which he issued the Summons. I never used my influence with the Government or His Excellency the Governor to delay the publication of the Charter incorporating the Church.

CAPTAIN DUMARESQU. I am acquainted with the Archdeacon. I recollected being requested, I think it was on Good Friday, to accompany him to the Female Orphan School, which I did; he read the prayers in the School; upon going in at the door he met Mrs. Walker, and in a very polite manner asked how she was. Mrs. Walker did not at all appear alarmed at seeing the Archdeacon. I saw nothing in the Archdeacon's behavior to Mrs. Walker but the most Gentlemanly conduct. I cannot conceive that any person could expect more politeness unless servility was wished. I am sure, if Mrs. Walker had appeared frightened, or if the Archdeacon had behaved other than what I have described, I should have been struck with it, and should have remembered it particularly, as it would have been so different from his character. I recollect having been called upon by the Archdeacon some little time after to state how he behaved himself towards Mrs. Walker, when I gave the same Statement.

THE HONBLE. MR. McLEAY. I am very well acquainted with Mr. McArthur, and have the highest opinion of him as a Magistrate. I draw my opinion from Official Documents, which I have received from him acting in his character of Magistrate.

Here Mr. Keith was interrupted, first by Mr. Wentworth and then by the Court in his examination. The Court agreed with

Mr. Wentworth that this was not evidence and that it could not be allowed.

1827.
24 May.

MR. KEITH. I am well aware that it is not truly speaking legal evidence, but, surely after the irrelevant matter which the Plaintiffs have been allowed to go into, and after the vile aspersions that have been so thickly asserted against the Public characters of the Defendants, I think it but fair that this evidence should be gone into. I call it not as evidence of private worth, but I call it to disprove the assertions that these Gentlemen have generally acted wrong. I wish by it to shew that, in their Magisterial capacity, they have always acted with uprightness and integrity. The Court not agreeing with Mr. Keith and not allowing him to proceed in that course of evidence (observing that he ought to have stopped Mr. Wentworth in the line of examination he was complaining of), he could not call Captain Rossi, Mr. Andrew Allan, and several others, who would have spoken to the public character of the Defendants.

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

DR. ANDERSON was then called and states: I know Dr. Bowman; he visited Parramatta on the Morning of the 6th of April. I arrived there from Windsor on the afternoon of that day, my not arriving earlier was that I had been detained at Windsor. Dr. Bowman, as he informed me in the official Letter, I received from him, directing me to proceed to Parramatta, came there to introduce me to my several duties.

MR. GARLING. I am Clerk of the Peace; this is the Commission appointing Laughlin McAllister, Esqr., a Justice of Peace for the Colony, dated 7th March, 1826; there are such things as Antedating Instruments, but does not think from the length of time he has held this that it could have been antedated. *

MR. GURNER. Mr. McAllister was sworn in in March, 1826, as a Magistrate for the Territory before Mr. Justice Stephen.

THE REV. MR. KEANE. I am one of the Colonial Chaplains and Master of the Female Orphan School, in which Office I succeeded Mr. Walker. On commencing the duty, I found the School in a deplorable state. There was but one Female Servant to perform the Washing, Cooking and other household duties, besides attending to the Children; the number of Children was upwards of 125, Fifteen of these were helpless infants; these in particular were in the most pitiable condition. Mrs. Keane was in very ill health and incapable of rendering the slightest aid. I was frequently obliged to visit the room, in which the Infants were during the night in consequence of their cries. I found them rolling out of their beds in a state of filth, the most disgusting. It was a heartrending sight. This was immediately after Mr. Walker's departure. I certainly attributed to their, and does still do, Mrs. Broadbear's having quitted her service without giving notice, as, when Witness got Servants, he prevented the occurrence of the evil. What rendered it worse was that the Itch was in the School; all the Children were infected more or less. Mrs. Broadbear was the nurse and housekeeper. Conceives that as such she must have been the Servant of the Institution. No woman of common feeling would have gone away leaving these helpless children as they did. I could not discharge a Servant of the Institution. I have no authority to do so, and I believe I have the same authority Mr. Walker had.

1827.
24 May.

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

JOHN CAMPBELL ESQR. I know Mr. McAllister's family and friends in Scotland; they are most respectable. General McDonald of the Horse Guards is Mr. McAllister's first Cousin. I believe General McDonald to be a particular friend of the Governor's. This would I think have been sufficient influence (if any were used) to cause the nomination of Mr. McAllister to the Magistracy.

MR. KEITH. I went to Parramatta on the 6th April at the request of the Attorney General, Mr. Moore not being able to attend to prosecute Broadbear and Wife for having left their employ without giving notice. I examined Mr. Walker as a Witness on the part of the accusation; he afterwards acted as Defender of the Plaintiffs. I remember, previously to Broadbear's business being called on, that a case for stealing fruit from Mr. McArthur's ground was gone into. Mr. James McArthur was Complainant, and did not then sit as a Magistrate; when the case was deciding, he withdrew from the Bench. Broadbear's case then came on and when it was concluded the Court broke up.

Cross Examined. I have now a perfect recollection that no business was called on after Broadbear's.

Here the Defence closed, and Mr. W. C. WENTWORTH rose and said, after the opinion which had been expressed by His Honor, that the whole mass of evidence given by the Archdeacon, as well as by Mr. Walker was totally irrelevant to the case. I will not detain the Court for any length of time by commenting on it. But, notwithstanding, I feel it but an act of justice towards my Clients to press upon the Jury the fact that, whilst Mr. Walker was a bad judge of his own Conduct, he was still a better judge of the conduct of the Archdeacon than the Archdeacon himself. With this observation, I will dismiss the Archdeacon, merely remarking that it was only from the inferential deduction that some of his hostile feelings towards Mr. Walker had been infused into the Magistrates, that I at all advert to him. It has been stated that Dr. Bowman arrived at Parramatta on that Morning; that previously to the enquiry at the Police Office, he had been inspecting the Institution, and had reported that it was in a scandalous state, and that his report as such was borne out by the evidence of Mr. William McArthur. The Archdeacon, denying that he communicated with any of these Gentlemen, said that it was highly probable that, being in Parramatta, they would have known the case was coming on. His evidence also went to shew that the three Defendants were his intimate friends. If Dr. Bowman then felt so strongly against the Institution at the same time that he was the private and intimate friend of the prosecutor, was it decent, I would ask, in him to go into the Court as a Judge? Was it not as indecent, as if he had gone upon the private solicitation of the other Magistrates? What business had he with feelings of that nature to act as a Judge in that particular case, and why, when he did go, was it that he acted in the indecorous manner, it was proved he did, by saying to Mr. Walker that they wished they could lay hold of him too? Why rudely interrupt Mr. Walker in his defence of these poor people? Did this *accidental* Magistrate think it was too much that they should have the benefit of their Master's assistance, seeing that there was a Lawyer, a regular advocate of the Court, arrayed against them? was this the pure and incorrupted conduct that was so much vaunted? Did he imagine this was the way he could cast back the imputation that he was packed? Would the evidence

of Mr. Lawson and of Dr. Harris be rebutted by such a Statement as that? with regard to Mr. James McArthur, too, who would also throw back imputations, I would say; let him if he could, what were the facts in evidence as regards him? That he had sat on the Parramatta Bench during a period of three years but twice before this occasion, the one a case of horse Stealing, in which his cousin was the Complainant, and the other a case in which his Father was concerned. Pretty creditable this to his delicacy as a Man, to his character as a Magistrate? what evidence was there before the Court to shew that he was not fully aware that this particular case was coming on, and that he was not the intimate friend of the prosecutor? and I put it unhesitatingly to the parties whether they did go there by accident? I do not believe they did. If they went there by accident, and possessed a spark of delicacy, would they not have quitted the Court immediately when they saw that case was coming on? what did they stop there for? They stopped against delicacy, and with the full knowledge of the imputation that would in consequence stick to them through life. I care not how the Defendants were packed, whether of their own accord only, or by the solicitation of another. How did Mr. McAllister attempt to clear himself? His reasons forsooth, his account of how he happened accidentally to be there were detailed as given in evidence in a conversation with Mr. William McArthur. But when did that conversation occur? not until Months after, not until he heard he was about to be prosecuted by the Plaintiffs. If these reasons had been stated before he went into Court, and not until two or three Months after the fact, they might have had some weight. But, if such paltry excuses as these were allowed to avail, who would labour under imputation, if imputation could be got rid of by such an evasion? It should not be forgotten that Dr. Bowman never visited the Bench but once before during a period of three Years. That fact was incontestably proved by the Clerk upon a reference to the records, whilst Dr. Harris and Mr. Lawson both concurred in that proof. Mr. McArthur was there twice during that time, each occasion being one on which it would have been much more decent for him to have been absent. Mr. McAllister was never there before; how astonishing then that they should have all dropped, as it were, from the Clouds on that particular occasion! Mr. McAllister it was said merely attended to see how the Magistrates' proceedings were conducted! To take a lesson after his new Appointment! Was the Parramatta Bench that to which any man in his senses would have looked for information? Why, if this Gentleman was so anxious for Instruction, why could he not have gone to Sydney and seated himself for an hour or two on the Bench beside Captain Rossi and Mr. Carter, where he would have seen something like Magisterial conduct and proceeding? Why above all other places should he have popped himself down beside Dr. Harris, who, above all the Magistrates in the Colony, was never out of rule, never erred? Was there a tittle of evidence that he had ever taken another lesson? and, if he had not and had since acted upon the one he received on that occasion, what a pretty condition His Majesty's Subjects in Argyle must be in up to this day, between him and Mr. Charles Throsby, who for all that appeared had never taken a lesson at all! But, if the Court could ever believe the cock and bull story that was attempted to be foisted on them, and the Gentlemen on the other side think it was any

1827.
24 May.

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

1827
24 May.

Report of
proceeding
in Broadbent
and wife v.
Macarthur, J.,
and or.

answer to the Action! Establishing an error in Judgement might go in mitigation of Damages, but did he imagine that error of Judgement was any bar to the action? If so, I hope the Court will rectify my Judgement without taking the trouble to send, as they were bound to do, to the Attorney General for his opinion of the case; but, upon the mere dictum of Mr. Kelth, who was sent down to prosecute these parties and whose Interest it was to procure a Conviction, without taking the trouble to look into their Manual Turn's Justice, or into the act to see what class of Persons it applied to, but upon the mere travelling opinion of Mr. Kelth, who very wisely, however, refused to guarantee that opinion without any other authority than that of a black book begged out from under his arm, without any of that deliberation which Magistrates were bound to exercise, did they at once go on to a decision, and by the mouth of their most distinguished organ, Dr. Harris, proceed to inform these poor Devils that the majority of the Bench had sentenced them to three Months Imprisonment! was that sentence too adduced in confirmation of the pure motives which actuated these Gentlemen to be present? They were in Parramatta by chance, and was it by chance also that they should have been for inflicting the very highest punishment, awarded by the Act, in opposition to the majority of the Bench, who were for inflicting various mitigated punishments? It was impossible for a moment to imagine from these facts that they did not attend there for the very purpose of imposing the utmost penalty of the Act. The Declaration of a thousand of them would never convince me, would never convince any honest Man that such was not the case; that they were not picked; that they were not guilty of one of the foulest acts they could commit; one which would and ought to stick to them through life a plain and wilful dereliction of their Oaths. With regard to the Law of the case, it was not necessary that proof of actual malice should be given. The whole question for the consideration of the Court was whether there was, or was not probable cause, because, if there was not, malice then became an inference of Law. Mr. Wentworth proceeded to quote various authorities in support of the Law of the case, as stated by him, and concluded by observing that from the testimony before the Magistrates there did not appear one tittle of evidence to bring these parties within the meaning of the Act, 6th Geo. 3, even if it applied to this Colony; that error of Judgement might go in mitigation of Damages; but that the sole question then for the consideration of the Court was whether or not there was probable cause for the conviction which took place.

His Honor Mr. Justice STEPHEN, in summing up, observed it is my duty to state to the assessors that it will be unjust to frame your verdict with any reference to the refusal on the part of the Defendants to accede to a proposal, that has been made to them, to send the case before a Jury, which, by Law, they had an undoubted right to refuse or not as they should think proper. You are to throw out of consideration every thing arising out of the case from the Defendants having chosen to resort to the mode pointed out by the Law, upon the same principle that a party refusing to submit to an Arbitration should not have his case prejudiced, because he thought proper to prefer the ordinary mode of proceeding. The present action is one that has excited a considerable degree of Interest, and, at the trial of which, the Court

has been attended by more auditors than it was usual to see in this Colony. It is a case of much importance, as one in which Persons of high rank were concerned, in which the Magistracy was concerned, and in which the liberty of the subject was concerned; and one in which a degree of asperity has been exercised, and which I am sorry to see exist. Being then a case of this nature, and one which the Chief Justice has thought fit to express a desire that I would sit in, I deem it necessary to go further into the consideration of it than I otherwise would do with regard to the proceedings, on which the action was grounded; it appears that the Magistrates at Parramatta carried into force an Act of Parliament against domestic Servants, supposing that it not only applied here, but that it applied to the individuals brought before them. After giving the Act of the 6th Geo. 3, on which the conviction was founded, the fullest consideration, I perfectly coincide in the decision of the Chief Justice that it did not apply to these Persons, nor did the facts Warrant the conviction as against them. The case of Lowther against the Earl of Radnor and others did not in any way mitigate against that decision. The Act never contemplated to have in view persons of the description of the Plaintiffs in the present action, or their superiors in situation of life, which would be the case, if the construction, which had been attempted to be put on it, was bore out, and that for a very important reason. The summary powers of Magistrates were unknown to the common Law of England. They were looked at with a jealous eye, as they superseded the necessity in many cases of Trial by Jury, a privilege the abridgement of which should be allowed as tenderly as possible. In particular cases, this institution, by which every Englishman claims the right of being tried by a Jury of his Country, was curtailed by the power of summary Jurisdiction, vested in the Magistrates, by various Acts of Parliament; but, in no case, were Magistrates warranted to go beyond the strict letter of the Law; with these preliminary observations, I will proceed to state the facts of the case, as they appeared in evidence, and my comprehension of the Law arising out of them. It appears to me that the Conviction was not only defective on the grounds, upon which the Chief Justice's decision was delivered; but I am also of opinion that it must have failed on another point. Though the Law in some cases authorised summary convictions before Magistrates, superseding the right of Trial by Jury, it never gave a power to dispense with the very first principle of British Jurisprudence, namely, that a Man was only to be found guilty in the presence and on the Oath of his accuser. On this occasion, the complaint was made by The Venerable the Archdeacon. The presumption, from that Gentleman's evidence, was that he was sworn; but, at the time when the parties were brought up to answer for an alleged offence for which they were thought liable to imprisonment in the Common Gaol, the Archdeacon was not present, nor was any evidence given by him; and this of itself would have vitiated the Conviction. I now come to the facts of the case. Mr. Walker attended at the Police Office; he was examined as a Witness, and what did he state? not that these parties were employed by the Archdeacon, but by himself; and, if the Jury believe his testimony, *and no reason appears for discrediting it*, it was conclusive that the hiring was by him, the dismissal was by him. Under these circumstances, as distinctly

1827.
24 May.

Report of
proceedings
in Broadbent
and wife v.
Macarthur, J.,
and ors.

1827.
24 May.

Report of
proceedings
in Broadbear
and wife v.
Macarthur, J.,
and ors.

stated by Mr. Walker, the main ingredient was wanting, on which to proceed against these Persons; for what offence was it in a party quitting a situation with the consent of the party by whom he was hired? Wherein consisted the offence in the total absence of all evidence of a breach of Contract with him, by whom the party was originally hired? The mere act of the payment of wages did not constitute the act of hiring. The Wages to the Crews of Ships are paid by the owners, and yet the Men were to all intents and purposes the Servants of the Captain, who had the uncontroled power of hiring or dismissal; a considerable deal of evidence has been gone into as to the original nature of this Contract; but I see no reason at all to doubt what has been given in evidence by Mr. Walker. He stated that the Original demand was £40, but that they subsequently agreed to hire with him, so long as he remained in charge of the Institution, for £25, which was afterwards increased to £30, expressly stipulating that they were to stay no longer than he staid; and, in pursuance of which original stipulation that could never be altered except by inuendo, they did so leave. I will not dwell at any length on the evidence given by some of the Magistrates, after it has been so recently adverted to by Counsel. Mr. Lawson's impression that the three Defendants came expressly to give judgement in that cause was in evidence on the testimony of that Gentleman. There was also other and contradictory testimony; but, as to the weight of evidence on either side, it was the peculiar province of the Jury to decide. Though the remaining part of my duty is a painful one, yet I feel called upon to perform it. The question of probable cause, as it has been laid down, is one expressly of Law; and, as such, I am under the painful necessity to give at once as my opinion that, from all the circumstances of this case, there was a want of probable cause; there was not probable cause for the conviction. The malice, which the Law presumes to be deducted from such want of probable cause, is exclusively the province of the Jury to consider; in doing which, you will, Gentlemen, remember that you are to be guided by the facts of the case as before you in evidence, and by these facts alone are you to form your Verdict. I must further impress upon your minds the necessity of your entirely discarding from your consideration all the irrelevant evidence, which has so unfortunately taken up so great a portion of your time; and I must observe that I take great blame to myself for having allowed such evidence to have been gone into, and I wish it to be impressed upon the Bar that such a course is not to be considered a precedent, as I never will allow the like again.

[Enclosure No. 5.]

Warrant to
colonial
treasurer
for payment.

[A] WARRANT FOR PAYMENT TO COLONIAL TREASURER BALCOMBE.
By His Excellency Lieutenant General Ralph Darling, Commanding
His Majesty's Forces, Captain General and Governor in Chief
of the Territory of New South Wales and its Dependencies,
etc., etc., etc.

You are hereby authorized and required out of the Public Money in your charge to pay or cause to be paid to the Reverend William Walker, Superintendent of the Female Orphan School, the Sum of Seven Hundred and sixty nine Pounds Seventeen Shillings and eight pence, halfpenny, Currency, or Three thousand and Seventy

nine Spanish Dollars, and fifty four Cents, to enable him to liquidate the accounts of that Establishment for the Quarter ended 31st December, 1825, as per the annexed Abstract.

And, for so doing, this, with the Acquittance of the aforesaid William Walker, or of his Assigns, shall be to you a sufficient Warrant and discharge.

Given under my hand at Government House, this 31st Day of December, 1825.

RA. DARLING.

Received the above Amount in full, Sydney, 13th February, 1826.

W. WALKER.

1827.
24 May.

Warrant to
colonial
treasurer
for payment.

[B] ABSTRACT of Accounts of Expences of the Female Orphan Institution payable for the period ended 31st December, 1825, as submitted for Warrant by the Reverend Wm. Walker, Superintendent of the School. Abstract of accounts of female orphan school.

Name of Claimant.	Service.	Period or Date.		Amount. Currency.
		From.	To.	
Mr. and Mrs. Broadbear	One Quarter's Pay @ £30 per Annum..	1 October..	31 Decr. ..	£ s. d. 7 10 0
Mrs. Johnson and .. }	Do. Do. £12 ea.	" ..	" ..	6 0 0
Mary Hassleburg .. }	Do. Do. 4 "	" ..	" ..	2 0 0
Mary Bruce }				
Elizth. Lees }	" ..	" ..	5 0 0
Graham }				
Tammering }	Do. £10 each	" ..	" ..	15 0 0
McKean }				
Driscoll }				
Chillerly }				
Burns }				
Turner }				

I Certify that the above is a Correct Abstract of the Accounts submitted by the Superintendent of the Female Orphan School as requiring to be liquidated for the Quarter ending 31 December, 1825.

WM. LITHGOW, Commiss. of Accounts Office.

[C] ACCOUNTS of Female Orphan House.

Servants' Wages:—Vizt.			Receipts for wages.
June 31st, 1825.	Mr. and Mrs. Broadbear	£ 7 10 0	
	Michael Graham	5 0 0	
	John Crowther ... }	@ £2 10s. ea. Pr. quarter....	15 0 0
	James McKean ... }		
	Henry Tammering .. }		
	John Driscoll }		
	Burns }		
	Thomas Chillerly ..)		
	Overseer and repairer of Spinning Wheels	£27 10 0	
	Mary Hasselburgh) Teachers	2 10 0	
	Catherine Cooney)	6 0 0	
	Mary Bruce, Laundress	1 0 0	
	Elizabeth Lees, Cook	1 0 0	
		£38 0 0	

Received the Amount due to us Severally—

RICHARD BROADBEAR; MARY BRUCE; MARY ANN HASSELBURGH; CATHERINE COONEY; ELIZABETH LEES; JAMES MCKEAN; JOHN DRISCOLL, his X Mark;
T. CHILLERLY, his X Mark.

Witness present, M. GRAHAM.

[Enclosure No. 6.]

1827.
24 May.Report on
proceedings of
bench of
magistrates on
prosecution of
Broadbear, R.,
and wife.

REPORT of the Proceedings on the Complaint of the Venerable
The Archdeacon against Richard Broadbear and Wife,
Before the Magistrates at Parramatta, on the 6th day of
April, 1826.

President:—Dr. Harris; Lawson; McArthur; J. Palmer;
M'Alister; J. T. Palmer; and Dr. Bowman, Esquires.

On the Fourth day of April last, in consequence of Mr. Moore's being particularly engaged, the then Attorney General requested Mr. Keith to attend at Parramatta on the Sixth of same Month to proceed against R. Broadbear and Wife, who had been summoned for that day at the Instigation of the Archdeacon. The Complaint against these parties was that they had, without giving Notice, left their employment at the Female Orphan School, and thereby involved that Establishment in great confusion; and, by their hasty departure, had precluded those, who had the Management of it, from procuring fit persons to take their places. Upon giving me the Instructions, Mr. Bannister requested me to call as Witnesses, the Reverend J. E. Keane and Mr. Walker, the late Master of the Institution, which was done. He further requested me to state to the Magistrates that his opinion was that none of the Statute Law of England applied to this Colony, *but, inasmuch as it had been ruled by the Chief Justice, that a portion of the Statute Law of England was applicable to the Colony, and, as this particular Statute (viz. 6th Geo. 3, ch. 25) had not been touched upon, he conceived the Magistrates would be correct in Acting upon it, provided they were satisfied of its applicability and that the parties came within its meaning.* In opening the case to the Magistrates, I dwelt upon the enormity of the Offence, which had been committed by the then Defendants, and, unless an effectual Stop were put to such proceedings, not only would the public Institutions of the Colony be much impeded, but that every private family, who employed free servants, would be much injured. That in reference to what I stated as from the Attorney General, I begged leave to remark that, if they the Magistrates were entitled to Act upon the 6th Geo. 3, ch. 25, provided they were satisfied that it was applicable to the State of the Colony, I conceived there could be no doubts of the Applicability of a Law to punish an Offence, so soon as an Offence within the meaning of such Law was proved to have been committed. After stating this much, the first Witness I called on behalf of the prosecution was The Revd. J. E. Keane, Chaplain and Superintendent of the Female Orphan School, who stated that he took charge of the Female Orphan School on the 30th March; that both Broadbear and his Wife were then Absent, and had continued away ever

since; from which absence, great confusion and inconvenience had arisen. That there were about 125 Children in the Institution, 15 helpless infants, and none of the others above 12 Years of Age. That, in Consequence of the departure of the Defendants, Deponent was obliged to assign a baby to each of the bigger Girls, and that, from want of the assistance of Mrs. Broadbear, he in the middle of the night found the babies rolling about in filth; that, on his taking charge, there was but one Domestic, Mrs. Johnson. Mr. Keane further stated that, though he held the same Situation that Mr. Walker had, he did and could not consider the Servants paid by Government for the Institution as his Servants, and further considers that he could not of himself discharge any Servant of the Institution.

1827.
24 May.

Report on
proceedings of
bench of
magistrates on
prosecution of
Broadbear, R.,
and wife.

The 2nd Witness I called to prove the offence against the Defendants was Mr. William Walker, who stated that he was the late Master of the Female Orphan Institution; that he left the Institution on the 31st March; That Defendants were his Servants. Upon this, he was asked how he came to consider them his Servants; he answered in Consequence of his having engaged them as such; he went on to state that the Defendants were paid by Government. It was under the following Circumstances that he procured Mrs. Broadbear and her Husband to become Domestics to the Institution, viz. By his discovering the inefficiency of the bigger girls of the Schools, and finding himself and Mrs. Walker were unable personally to discharge the Duties of the School, he made a representation of the circumstance to Major Goulbourn, the Revd. Mr. Reddall, and likewise Sir Thomas Brisbane, at which time there was not a single Domestic assigned to the Institution, and he (Mr. Walker) informed Major Goulbourn he knew of a *Married Couple*, who were capable of yielding them every assistance. After this conversation he, Mr. Walker, employed Mrs. Broadbear and her Husband; previous to their agreeing to undertake the Situation, they requested £40 per Annum; but, upon learning from Mr. Walker that he was to pay their Wages out of his own pocket, they agreed to come to him for £25, at the same time stating that the day Deponent left they would leave also, Broadbear stating he would not serve under the Government of any other person than Mr. Walker *at such* a Salary. Mr. Walker communicated this to Major Goulbourn and Reverend Mr. Reddall, who made no remark. Previous to this communication with Major Goulbourn, Major Goulbourn had verbally informed Mr. Walker that Broadbear and Wife might be fed at the Cost of the Institution; and, about a Month afterwards, Major Goulbourn and Mr. Reddall came again to the Institution, when, upon being shewn all the Improvements which had been

1827.
24 May.

Report on
proceedings of
bench of
magistrates on
prosecution of
Broadbear, R.,
and wife.

effected, Major Goulbourn then said, Mr. Walker, you shall not be out of pocket by Broadbear and his Wife; and Mr. Walker afterwards drew their Wages from Government, the first Quarter at the rate of £25 per Annum, and the following Quarters at the rate of £30 per Annum. Upon being asked, he added that, although they were paid by Government and notwithstanding that the parties themselves were aware that they were paid by Government and not by him (Mr. Walker), yet he considered them his private Servants, and up to the 30th the day they left the School and with his leave. He further stated that, though he so considered them his Servants, He had given His Excellency The Governor, through Colonel Dumaresq, verbal Notice of the Intention of Broadbear and Wife to quit, when he did; that he considered it impossible for the Government to have supplied Mrs. Broadbear's place in the short interval between the giving the Verbal Notice and her leaving the School. That he, Mr. Walker, sent in his resignation in writing, but did not in such resignation mention the Defendants, Broadbear and Wife.

Being asked whether he considered them *given to him* as his private Servants, he stated that he believed they were given to assist Mrs. Walker in the Institution.

Being asked whether, when aware of the loss the Defendants Broadbear and Wife would occasion by going from the School in the precipitate manner that they did, he exerted his influence with them to remain? he answered No.

He further added that the Names of Broadbear and Wife were included in the Warrants drawn out for their Wages, and that Mrs. Broadbear signed such Warrants. That both Defendants, Broadbear and Wife, were well aware that they were paid by Government, and not by Walker, and that they were fed at the Expense of the Government.

Here then, may it please Your Excellency, ended the prosecution. I had a Witness ready to examine to prove that the Defendants were paid by Government Quarterly, but, this being substantiated by the evidence of Walker, it was unnecessary, and I therefore did not call them. The Defendants were then called upon for their defence, upon which Mr. Walker rose and argued for them; but it appeared to me, as I believe it did to the Magistrates, that the conclusion, to which Mr. Walker came as to his being Mr. and Mrs. Broadbear's private Master, *was to say the least of it incorrect*. I think I may safely say that none of the Magistrates seemed to believe the Statement Mr. Walker made as to the particular contract entered into with them, at the time they went to the School; but they the Magistrates were satisfied that, as both Mr. and Mrs. Broadbear were aware from whom

they received their Wages, and by whom they were fed. that they Mr. and Mrs. Broadbear must have felt convinced, that they were considered and were Government Servants, and that it was only to serve the private spleen of Mr. Walker that they lent themselves to him, and so left the Institution without any cause and without giving any sufficient Notice. There were Seven Magistrates on the Bench; all came to the conclusion that the parties before them had committed a gross offence, for which they deserved punishment; that they were Government Servants, paid Quarterly, and ought to have given Notice, which they had not done, not even to Walker himself; for, granting he as Government Agent was entitled to discharge them upon their giving Notice, it was only the very day they left that they said anything to him on the matter, although strange it was that he for them gave Colonel Dumaresq verbal notice some days before, sufficiently shewing that at the last they, Broadbear and Wife, had lent themselves to commit inhumanity at the instigation of Mr. Walker. The Magistrates, from what I stated to them in the outset, conceived that they had a right to consider whether the Act was applicable to the Colony (and which with deference I submit, if the statute Law of England is to be considered in force in this Country, according to its applicability they had a right to decide upon) *decided that it was applicable*. And further conceived that the persons came within the meaning of the Act, and therefore ordained that they, Broadbear and Wife, should be confined in Prison. There was it seems a difference at first as to the extent of punishment; Mr. G. Palmer and Dr. Harris being for one Month's imprisonment, Mr. Lawson and Mr. J. Palmer for two Months' imprisonment, and Mr. McArthur, Mr. McAllister and Dr. Bowman for three Months' imprisonment, Mr. McAllister and Dr. Bowman stating they considered the Conduct of Broadbear and his Wife so inhuman and Cruel, and the offence of so deep a die, particularly as regarded the Interests of such an Institution, that they felt the severest punishment ought to be awarded them. Upon this, Dr. Harris as Chairman informed the Defendants that their conduct was considered by the Bench to proceed from gross inhumanity; that, if they had been instigated thereto, that could not shield them, and therefore the Bench ordered them to be confined in the common Gaol as a House of Correction for the term of 3 Calendar Months.

Thus ended the proceedings against these parties at Parramatta, and no other business on that day was, after this case, brought on. Previous to the hearing of this case, a cause, in

1827.
24 May.

Report on
proceedings of
bench of
magistrates on
prosecution of
Broadbear, R.,
and wife.

1827.
24 May.

which Mr. James Macarthur was Complainant, was heard. In this case, Mr. James Macarthur did not act as a Magistrate but left the Bench, while it was being decided.

[Enclosure No. 7.]

Report by
attorney-
general on
quashing of
magisterial
proceedings by
supreme court.

REPORT by Attorney General on the decision of the Supreme Court quashing the proceedings of the Magistrates.*

IN adverting to the proceeding on the Certiorari, I have to observe that no obstacles were thrown in the way by the Magistrates; on the contrary, every facility was by them afforded to Broadbear and Wife to have the Conviction brought before the Supreme Court for its decision. Against the Conviction, ten objections, I believe, were taken, and this I take from Memoranda of the late Attorney General, who conducted the case for the Magistrates. As I have no Minutes of the Arguments, either for or against the Conviction, I cannot here detail them; but I beg leave to submit to Your Excellency the decision of the Chief Justice, whereby he quashed the Conviction. In reference to that decision, I beg leave to make one observation, viz. that in perusing the Judgment, rendered by Chief Justice Forbes, and in adverting to the opinion of Lord Ellenborough in the case of Lowther against the Earl of Radnor, reported in 1st Easts reports, a seeming difference would appear to exist—at least an individual not brought up to the subtleties of the Law might imagine a difference of opinion to exist—And without the decision of His Honor The Chief Justice might very naturally, from the opinion of Lord Ellenborough, come to the conclusion that the extensive term “others,” used in 6th Geo. 3rd, chap. 25, included Menial as well as other laborers. I make this remark to point out to Your Excellency how likely it is that Magistrates, unacquainted with the technicalities of the Law, should have come to the Conclusion that Broadbear and Wife were within the meaning of the Act 6th Geo. 3rd, ch. 25. The Chief Justice’s decision is as follows:—

June 9th, 1826. The Chief Justice proceeded to give Judgment as follows, “The conviction made by the Magistrates in this case has been objected to on many grounds. Some of the objections rest upon the form of the Conviction, and others proceed the more solid basis of the want of jurisdiction. I intimated, at the close of the Arguments of Counsel, that, assuming the defects upon the face of the conviction itself to be as stated, they appeared formidable; but I deferred expressing my decisive opinion on them, until I should be able to look into the whole case and see if the Magistrates were substantially right in what they did. Although they might have erred in the manner of

* Note 82.

stating it, and I do not hesitate to declare that if, upon a careful examination of the whole facts of the case, I could have discovered legal foundation for the summary interference of the Magistrates, I would have strained hard to support their jurisdiction. Adhering to the same principle, I shall dispose of the case upon its merits, observing by the way that the summary form of conviction, pointed out by the Act 3 Geo. 4, chap. 23, which appears to have been followed by the Magistrates, gets rid of many of the formal objections made by the Defendants' counsel. The case then substantially raises two questions:—Whether the Law, under which the Conviction was made, applies to the Colony, and, supposing the Law to apply, whether the situation of the parties brought them within it? What Statutes or parts of the Statutes of England are to be received as part of the Law of this Colony cannot be exactly defined. As a general proposition, it is laid down by text writers on the subject that, if a New Colony be settled by English Subjects, all the Laws then in being are transported there as the birth right of every subject. 'But this,' says Judge Blackstone, 'must be understood with very many and very great restrictions, such colonists carry with them only so much of the English Law as is applicable to the condition of an Infant Colony.' It is upon this point, the Applicability of the Statute, that the difficulty always presents itself, sometimes in the form of objections to the policy of the Law itself, and sometimes to the want of the necessary Machinery to set it in Motion. One of the objections taken by the Defendants goes to the latter point, viz. that the penalty of the Law is commitment to the House of correction, and that there is no house of correction in the Colony. But the same objection may be raised to other Statutes, which unquestionably do apply for example, the Statute 2 Geo. 2, Chap. 36,* is expressly directed by the New South Wales Judicature Act (Sect. 40) to be enforced in this Colony, and that Statute (Sect. 4) contains a provision for punishing refractory Seamen by Commitment to the house of correction. In the absence of positive Law, it is always a relief to find the concurring opinions of able Lawyers, and to see what has been considered applicable to the condition of other Colonies. It is said by Pemberton, in arguing the case of *Blanford Galdy* (4 Mod. 225) that the Statutes of Usury and Laborers are not used in Jamaica; and, with some experience in other Colonies, I can say that I have never known them applied in any of those, with which I am acquainted. Indeed the whole principle of labor is different from what it is in the Mother Country. In most, perhaps all of the older English Colonies, Labor properly so called is forced either by a System of Slavery

1827.
24 May.

Report by
attorney-
general on
quashing of
magisterial
proceedings by
supreme court.

* Note 83.

1827.
24 May.

Report by
attorney-
general on
quashing of
magisterial
proceedings by
supreme court.

or penal discipline; in England, it is free—the difference in the Law; in the one, it is regulated by the Will of the Master under a few humane restrictions; in the other, in the great divisions of husbandry and Manufacture, it is made the subject of a very large and particular body of enactments, proceeding on a principle of reciprocal lights and duties. Looking to the policy, the whole context of these Acts, I do not think they apply to this Colony. “But whatever doubt may exist as to the Applicability of the Act under Consideration, it is clear that the case before the Magistrates at Parramatta did not come within its operation. The Act (6 Geo. 3, ch. 25) recites that it frequently happens that Artificers, Calico printers, handicrafts-Men, Miners, Colliers Reelmen, pitmen, Glassmen, Potters, Labourers and others, who contract with persons for certain terms, do leave their respective Services before the terms of their Contract are fulfilled”; for remedy whercof the Act goes on to provide that, if any such Artificer, etc., *or other person*, shall absent himself from his Service before the term of his Contract shall be completed, then it shall be lawful for any Justice of the Peace to enquire into the Complaint, and, if it shall appear that such Artificer, etc., *or other person*, shall not have fulfilled such Contract, to commit such person to the house of correction for any time not exceeding three months. The question then is whether by the words ‘or other person’ are meant every person, who may have contracted in any manner to Serve Another, or only persons of a class or description similar to those particular persons, who have been before specified. If the words are to be taken in their general sense, then there was no occasion for any specification whatever, and a great part of the Statute becomes nugatory, for it carefully particularises a variety of artisans, and concludes with the use of general words, which comprehend every one of the persons, it had just before been at the pains of specifying, and which by a very easy gradation might be made to extend to every person, who contracts to serve another person for a given time in the capacity of a Clerk, a Steward or a Factor. That it was never the intention of the Legislature to subject such persons to the degrading punishment of a House of correction is too clear to be doubted. Upon the reason of the thing, as well as by the analogy of decided cases, the general words of the Statute must be restrained to Artificers, labourers and persons *ejusdem generis*. Among such persons, domestics or menial Servants are not included; they form a distinct class of persons from what the Law terms Artificers or labourers, and are regulated by a distinct Law. It has been decided that the Statute, 5th Eliz., Chap. 4, does not apply to them, and they are not within the policy of the

provision of 6th Geo. 3d. I cannot find any instance of a Domestic Servant being sent to the house of correction for a breach of his contract; and, considering the frequency of the occurrence, we should have found some cases, in which the Law would have been put in force, if it had been thought to apply; the silence of the Books carries an argument of some weight; but I rule the point upon the broad principle that I do not think House Servants are within the intention of the Act, 6th Geo. 3d, chap. 25. In looking into the conviction before the Court, I collect that the Defendants were Menial Servants to the Orphan School at Parramatta, whether engaged for the use of the general establishment, or retained for the Special Service of the Superintendent and his Wife, is of little consequence; they were domestics, properly so speaking, and as such they were not subject to the provisions of the Act, under which they were convicted. The proceedings of the Magistrates, therefore, must be quashed. I will not conclude without availing myself of this occasion to suggest to the Magistrates of the Colony the necessity of stating in every Conviction the Substance of the Charge, and such a description of the person, Complained of, as may enable the party himself, as well as this Court, to see what is the nature of the offence with which he is charged. This Conviction merely states that *Richard Broadbear and Mary, his Wife, did leave their employ at the Female Orphan School*, without any further description of what that employ was, or how far it came within the Law. The form of Conviction I have already alluded to, and a similar form adapted to the rules of practice for the Justices in and out of Sessions in this Colony has provided an easy form of conviction; but both forms expressly require that *the facts, for which the information is laid, should be set forth*, that is, should be set forth in a Short, but at the same time substantial manner, so as to shew that some offence in Law has been Charged."

1827.
24 May.

Report by
attorney-
general on
quashing of
magisterial
proceedings by
supreme court.

GOVERNOR DARLING TO SECRETARY HARRISON.

(Despatch per ship Australia.)

Sir,

24th May, 1827.

I have the honor to transmit the annexed register, stating the particulars of a Bill drawn on the Lords Commissioners of His Majesty's Treasury, as required by the 12th Clause of the public Instructions addressed to me by their Lordships.

Bill drawn on
H.M. treasury.

I have, &c.,

RA. DARLING.

[Enclosure.]

1827.
24 May.
Bill drawn on
H.M. treasury.

REGISTER of Bills drawn by me at thirty days' sight on the Right
Honble. The Lords Commissioners of His Majesty's Treasury.

No. of Bill.	Date.	To whom made payable.	For what Service	Amount.
1	3rd April, 1827 ..	Wm. Balcombe, Esqr.	Salary of the Chief Justice from 1st January to 31st March, 1827.	£ s. d. 500 0 0

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 71. per ship Australia; acknowledged by right hon.
W. Huskisson, 30th January, 1828.)

25 May.
Water supply
for Sydney.

My Lord, Government House, 25th May, 1827.

Recommend-
ations by
J. Busby.

I regret that circumstances have prevented my addressing Your Lordship before the present moment on the subject of Your Lordship's Despatch, No. 3/1826, respecting the introduction of Water into the Town of Sydney. I repeatedly communicated with Mr. Busby as to the best mode of accomplishing this object soon after my arrival. And I do myself the honor to transmit for Your Lordship's information a Copy of a Report, which I received from him at that time. It will be observed that Mr. Busby considers that "driving a Mine* the whole way" would altogether be the most advantageous. He then points out the benefit to be derived from raising the Water at the Lagoon, and states three distinct means of supplying the force Pump, which must necessarily be employed; 1st. A Steam Engine; 2ndly. A Tread Mill; and 3rdly, a Water Wheel, with the advantages and disadvantages of each.

Report by
J. Oxley and
W. Dumaresq.

Having visited the spot with Mr. Busby, the Surveyor General, the Civil Engineer, and several other Gentlemen, who were considered to be conversant in matters of this nature, it was the general opinion that the plan recommended by Mr. Busby of driving a Mine should be adopted. But, before I determined finally on this, I was desirous of receiving the opinion of the Surveyor General and the Civil Engineer in writing, and I called on them to report accordingly. Your Lordship will receive herewith the report, which was prepared in consequence, and will I trust approve of the view, which has been taken of the measure under consideration. According to the plan proposed, the Ex-
pence and inconvenience of raising the Water at the Lagoon will be avoided, and neither a Steam Engine, Tread Mill or Water Wheel will be required.

* Note 84.

I have further the honor to transmit for Your Lordship's information an Estimate of the Expence to be incurred in carrying the proposed measure into effect amounting to the sum of £22,953, together with a paper containing observations in explanation of some of the Items. It will be perceived that the Estimate has been framed so as to cover the Expence of employing free Mechanics and Labourers, should it be necessary. The employment of *Convicts*, who will be made use of as far as possible, will consequently reduce the Expence in proportion to the Numbers, which may be applied to the undertaking.

1827.
25 May.

Estimated
expenditure.

I trust Your Lordship will consider the Statement, contained in the "observations on the Estimate," satisfactory, which shews that a sinking Fund of £700 a Year will be left for the liquidation of the debt after paying an Interest of 4 per Cent. on the Amount of the Loan to be raised and the Necessary Expenses of Management.

Sinking fund
proposed.

It is important to observe that the Board has discovered, on a more minute examination of the Lagoon, that the height will admit of the more elevated parts of the Town being supplied without the aid of any Artificial force, which Mr. Busby supposed would be necessary.

Water levels.

The completion of the measure being highly important to the Inhabitants, who were exposed to great inconvenience from the long Continued Drought, which prevailed during the last Summer, I have been induced to take the opinion of the Executive Council, whether under this circumstance and the disposition expressed in the Instructions, which I have had the honor to receive from Your Lordship, to afford every reasonable assistance in effecting this necessary object, it might not be advisable to commence the undertaking without further delay. The Council has unanimously concurred in the expediency of the measure, and orders will be immediately given to proceed as proposed.

Approval of
executive
council.

I beg further to observe, in justification of the measure being commenced without waiting Your Lordship's final Instructions, that it has become necessary to re-engage Mr. Busby (whose agreement with Government expired lately), as well with a view to Superintend the present undertaking as the Management of the Coal Mines, there being no other person here who possesses any knowledge of the Matter, and considerable loss having been sustained and very serious injury done to the Mines from the want of a Skilful Superintendent.

Employment of
J. Busby.

Should Your Lordship, as I trust will be the ease, approve of the Work being completed in the manner pointed out, I request that the Agent for the Colony may be directed to forward the

Shipment of
pipes required.

1827.
25 May.

Pipes and other Articles required with the least possible delay. In the meantime, every exertion will be used to forward the undertaking, so that it may be completed without loss of time when the Pipes arrive.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

MR. J. BUSBY TO GOVERNOR DARLING.

Sir,

Sydney, 19th January, 1826.

Modification
of previous
report by
J. Busby.

In my Report* on the Supply of Water for Sydney, dated 30th June, 1825, I have recommended that the Water should be raised at the Lagoon into a Reservoir or fountain head; and I pointed out the means, by which this might be accomplished, Viz. a force pump wrought by a Steam Engine, a tread mill, or a Water Wheel.

Bore proposed
for entire
length.

In submitting this plan, I was chiefly influenced by motives of economy in a desire to avoid as much as possible the heavy Expense of mining. On further considering the subject, however, I am of opinion that, if £6,000 or £7,000 should not be considered an object in a work of such public moment, advantages might be gained by driving a mine the whole way, which would ultimately more than counterbalance the additional outlay.

The principal advantage that would result from raising the Water at the Lagoon would be the level gained, by which the Water would flow freely home and be delivered so high as to supply directly the most elevated parts of the Town. On the other hand are to be considered the prime Cost of the force pump and of the Machinery necessary for working it, the expence of erecting the Machinery, of keeping it in repair, and of its attendance. If a Steam Engine be employed, the original Cost is considerable, and the situation of the Lagoon remote both from Coal and Wood would render the Supply of Fuel extremely expensive. If a Tread Mill be employed, the erection of the Machinery, the value of the Labor, and the constant maintenance of a considerable number of Men are to be taken into account. If a Water Wheel be employed, which is certainly the least objectionable, it will be attended first with the expense of purchasing the property alluded to in the Report, and then with the erection and maintenance of the Machinery. To all which must be added the inconveniences arising from occasional interruptions in the Supply of Water from the Machinery going wrong and from the necessary repairs.

By adopting the Second method, and driving a Mine the whole way, Machinery at the Lagoon is rendered altogether unnecessary, and the expense and inconvenience connected with it are

* Note 85.

avoided. And though, in consequence of the loss of level, the Water cannot be delivered so high as to supply the Town, yet so much level will be preserved as to supply much the greater part of it; and it is anticipated that a run of water will be delivered from the mine sufficient to turn a small wheel for the Supply of the remaining parts.

1827.
25 May.

Bore proposed
for entire
length.

A Water wheel at this end of the mine is liable to the same objections as at the other head of it, but with other differences; first, that we have not to purchase the ground for the fall; second, that the Machinery would have to be on a much more extensive and Costly Scale in the former case than in the latter; and third, that the occasional accidents happening to the Machinery would in the one case interrupt the Supply of the whole Town, and in the other only a small part of it.

Estimate of the Expense of bringing in and distributing the Water on the supposition of a Mine being wrought the whole way.

Estimated
expense.

Mining 1705 fathoms at £7 7s.	£12,531 15 0
3.580 Yds. Cast Iron 9 inch pipe, weight 352 Tons, at £10 a ton	3,520 0 0
Laying and joining pipes including lead	142 0 0
Embankment in Lagoon	700 0 0
Distributing Water	3,322 0 0
	<hr/>
	£20,215 15 0

I have, &c.,
J. BUSBY.

[Enclosure No. 2.]

MESSRS. J. OXLEY AND W. DUMARESQ TO GOVERNOR DARLING.

Sir, Engineer's Office, 22nd March, 1827.

The Colonial Secretary having by Letter, dated the 1st Ultimo, directed that we should Report to Your Excellency our opinion on the propositions of Mr. John Busby on the subject of Conveying Water into the Town of Sydney, as more particularly detailed in Mr. Busby's 1st Report,* dated 30th June, 1825, and also the further measures recommended for adoption in his Second Report of the 19th January, 1826, together with the Despatch from The Right Honble. The Secretary of State.

Report by
J. Oxley and
W. Dumaresq on
plans proposed
for Sydney
water supply.

We submit to Your Excellency our opinion, under a careful perusal of the whole Documents, and personal examination and Survey of the proposed line, that the views, entertained by Mr. Busby in his Second Report, will more effectually serve the community by affording a regular and certain supply of Water than

* Note 85.

1827.
25 May.

Report by
J. Oxley and
W. Dumaresq on
plans proposed
for Sydney
water supply.

by adopting either of the plans proposed in his first Report. We are led to this conclusion principally by the difficulties, which are likely to arise by the maintenance of a sufficient force to keep the Tread Wheel in continual Work, and the liability to injury and accident, to which a Machine of this description is subject, every recurrence of which would stop the Supply of Water to the Town. In the event of Steam power being applied, the expences of the first Cost and necessary buildings and the consideration that Fuel, either Wood or Coals, must be transported thither at great Labor and Expence, with the constant care requisite to keep it in order, oppose many objections to its adoption.

The objection to the Water Wheel is simply the inconvenience liable from the Stoppage of the Supply of Water by any accident to the Machinery. All these objections are urged in Mr. Busby's Second Report, and we coincide with him in that Report in recommending a Tunnel to be formed to conduit the Water, although no doubt it will be attended with some additional expence, principally in Convict Labor, beyond the original Estimate. It, however, prevents the necessity of erecting any Buildings or Machinery, or the purchase of the Old Paper Mills, the ground, 'thro' which the Tunnel will pass, being in the possession of the Crown, with the exception of a small piece near Sydney, where it may be convenient (though not absolutely necessary) to carry the Tunnel for a short distance through Mr. Reiby's premises at Woolloomooloo, to which no objection is anticipated.

We are satisfied as to the practicability of conducting a Mine, such as is proposed by Mr. Busby, and examining the ground, and judging by its appearance, it has the character of affording assurances of the Work being secure and durable, and not of a hard nature to excavate, being soft Sand Stone; should the expectations on this head be realised, it is calculated that much of the Iron Pipe may be saved, for, in Constructing the Tunnel, should any Springs be cut through by which a Supply of Water might be obtained, it is probable the entire distance may not require to be cut; and, should the Water in the first instance partake of a Mineral quality, it is presumed the Mineral matter would in the course of a few years be dissolved and the Water become pure.

At the Mouth of the Tunnel, where it will join and receive the Waters of the Lagoon, it will be necessary to work it through Sand, in which case attention will be paid to secure the foundations by inverted Arches and other available means, if found necessary.

With respect to the best means of carrying the proposed measure into effect, it appears desirable to appoint, under Mr. Busby's immediate direction, a certain number of Miners and Quarrymen, together with a Blacksmith and a Carpenter, and a corresponding force of Labourers, with which he may commence his operations; in the course of which, his Establishment may be increased to almost any extent by sinking his Air Shafts, and working in a number of places at the same time; the space inclosed by the walls of the New Gaol* will afford him a Work and Lumber Yard, and some small Rooms at the entrance Gate Lock up places for Tools.

Concurring in the great necessity of Supplying the Town with Water and the expediency of adopting the mode thus pointed out, it becomes necessary to advert to the circumstance that the method of bringing the Water into Sydney will not deliver it at such a level as to supply the whole of the Town; the only part of the Town, thus apparently excluded from this great benefit, is the high Western portion called the Rocks; in every part of which, Wells at present exist of sufficient depth to meet the level and to receive the Water into them, over which they can place a pump, which will altogether preclude the necessity of forcing up a supply for this small portion of the Town by means of a small Water Wheel as proposed by Mr. Busby.

Although not called upon in this place to touch upon the Estimates of the Expence attending such a Work, as is now proposed, We may still be allowed to mention that, as much of this Labor will be executed by Convicts, the real Cost will not be nearly so great as stated in the Estimates.

We have, &c.,

J. OXLEY, Surveyor-General.

WM. DUMARESQ, Civil Engineer.

[Enclosure No. 3.]

MESSRS. OXLEY, DUMARESQ AND BUSBY TO GOVERNOR DARLING.

Sydney, 18th May, 1827.

May it please Your Excellency,

We have to acknowledge the receipt of the Colonial Secretary's Letter of the 30th Ultimo, requiring a detailed Estimate of the Expence of Supplying the Town of Sydney with Water by means of Pipes, as proposed by Mr. Busby, and recommended in a former Report of the 22nd March. In reply, we beg to submit the accompanying Estimate, drawn up with reference to the high rate, at which Labor is procurable by private means, which will

1827.
25 May.

Report by
J. Oxley and
W. Dumaresq on
plans proposed
for Sydney
water supply.

Report on
estimates
for Sydney
water supply.

* Note 86.

1827.
25 May.

Report on
estimates
for Sydney
water supply.

therefore bear a diminution (alluded to in the former Report) to the extent wherein it may be found expedient to unite with Free the cheaper labour of the Prisoners of the Crown.

The rate, at which the mining operation is calculated, is also intended to cover the expences incident to the supply, in the first instance, and subsequent repair of the necessary Tools.

The Water Houses and Cisterns are Estimated without regard to their being made ornamental buildings, or embracing anything more than is absolutely necessary.

It has already been adverted to in the former report that in all probability the Expence of the 9 inch Pipes leading through the mine from the Lagoon will not be required to be entered into, as we are disposed to entertain the Hope that any impurities or mineral qualities, which may be contained in the Water, drained into and conducted through the Tunnel, will in a short time purify itself, or become neutralised when mixed with the so much larger supply from the main Source; the Estimate on this head has therefore been classed more as a probable *contingent* charge, and might safely be deducted from the general amount; but we are of opinion, under all circumstances, it is better the Estimate should include every possible charge. Its amount as shewn is £21,253 6s. 6d., add to which the interest at 4 per Cent. on the above Sum for Two Years, during which no return could be expected, makes a total Sum of about £22,953 for the expences of the Work.

Estimated
revenue.

With regard to that part of our instructions, contained in the Colonial Secretary's Letter, calling for a Statement of the Sum, which should be paid by the Proprietors of Houses receiving Water, we have to observe that it appears by a Return from the Surveyor General's Office there are about 1,053 private Houses in the Town of Sydney, which at the low average Value of £30 Annual Rent each will produce the sum of £31,590; an Assessment of 5 per Cent. on which will yield £1,579 10 0
Add to which Charge for the Government Estab-

lishments	350	0	0
The Supply to the Shipping	400	0	0

Total Annual Income ..	£2,329	10	0
------------------------	--------	----	---

From which must be deducted the.

Interest at 4 per Cent. on the			
Capital expended	£918	2	10
Expence of Management, etc.	700	0	0
		1,618	2 10
leaving ..	£711	7	2

Surplus of Income as a Sinking Fund to pay off the invested Capital independent of the rapid increase of income, which must occur from the addition of Buildings in the Town.

1827.
25 May.

It is necessary to point out, as a guide in ordering the Pipes, that the 9 inch main Trunk will require to be of such a weight that each length of nine feet will weigh about 6 Cwt., and the three inch pipe 1 Cwt. each length of nine feet; they must be proved by a pressure equal to one hundred feet, and be of such a quality as to be capable of being perforated by a drill; they will of course be on the modern plan, having one end wider to receive the other fitted into it.

Twelve of the nine Inch Pipes will be required with a projecting orifice in the middle to receive the three inch branch Pipes.

In concluding our observations on the present Estimate, we beg to offer the assurance of its having been prepared with our best attentions, and we have to express a Hope that, in the execution of the Work, it will be found to be ample in the provisions, which have been made for the completion thereof.

We beg to point out, should it appear that any discrepancy exists in the Report and Estimate now prepared to be acted on, and that made by Mr. Busby in the first instance, it may in almost every case be attributed to the circumstance that, on a more careful and minute examination of the Lagoon and the intermediate ground between it and the Town of Sydney, a line of level was discovered, by which an advantage of 10 feet was obtained in it for the supply of the higher part of the Town, called the Rocks, which at once obviated the necessity to apply any artificial force, such as a Water wheel, for the supply of this portion of the Town, as proposed in Mr. Busby's original Report.

Discovery of
new line
of level.

We have, &c.,

J. OXLEY, S.-Gl. JOHN BUSBY.

WM. DUMARESQ, Civ. Engr.

[Enclosure No. 4.]

DETAILED ESTIMATE of the Expence of Supplying Sydney with Water according to the plan, proposed in the Supplementary Report to His Excellency Governor Darling, bearing date the 19th January, 1826; Specifying the number and quantities of each Article required.

Detailed
estimates for
Sydney water
supply.

100 Yds. Embankment at the Lagoon computed at £7	£	s.	d.
pr. Yd. including the expence of sheeting piles,			
Construction of Sluices, drains, etc.	700	0	0
Expense of Water House with Cistern at the Lagoon	113	0	0
Mining 1,705 fathoms at £7 7s. per fathom	12,531	15	0
4,261 lbs. Gun powder for Blasting at 6d.	106	10	6

£13,451 5 6

His Excellency submitted a Despatch from Earl Bathurst, No. 3, on the subject of introducing Water into the Town of Sydney, as likewise the Report and Estimate of the Officers of Government, who were called on to prepare these Documents, conformably with the Instructions contained in the Despatch above alluded to. His Excellency adverted to the inconvenience and risk attendant on any further delay in carrying Mr. Busby's Plans into effect, and instanced the excessive Drought of last Summer, and the evils experienced therefrom, as a proof of the urgent necessity of commencing this important and essential work without loss of time.

1827.
25 May.

Approval of
plans proposed
for water
supply.

The Council fully concurred in His Excellency's views, and recommended that no time should be lost in carrying into execution the Plans submitted.

The Proceedings here terminated and the Council was dissolved.

A true Copy:—WM. LITHGOW, Ag. Clerk of the Council.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Australia.)

My dear Sir, Government House, 25th May, 1827.

I enclose two Letters for the Military Secretary, which I request may be forwarded in the event of the officers, to whom they relate respectively, being confirmed in the Appointments to which they have been nominated, Vizt.

Transmission
of letters for
military
secretary.

Lieut. De La Condamine as Collector of Internal Revenues; and Lieut. North as Keeper of the Bonded Stores.

The enclosed Letters contain their applications to retire from the Service, and I request they may be returned to me should they not be confirmed.

I remain, &c.,

RA. DARLING.

[Enclosures Nos. 1 and 2.]

[These were letters to Sir Herbert Taylor, dated 15th and 16th May, 1827; see page 308.]

[Enclosure No. 3.]

LIEUTENANT NORTH TO LIEUTENANT DE LA CONDAMINE.

Sir, Sydney, N. S. Wales, 28th May, 1827.

With reference to my letter of the 25th of April, requesting permission to be allowed to retire from the Service by the Sale of my Commission, I beg, in the event of my application being complied with, that the purchase money may be lodged in the hands of James Ashley, Esqr., Army Agent, No. 135 Regent St., London, for my account.

Instructions
re disposal
of purchase
money.

I have, &c.,

S. NORTH, Lieut't, N. S. Wales R. Vet'n Comp'y.

1827.
26 May.

GOVERNOR DARLING TO EARL BATHURST.
(Despatch No. 72. per ship Australia.)

Transmission
of returns
of crime.

My Lord,

Government House, 26th May, 1827.

In obedience to the Commands, communicated in Your Lordship's Despatch dated the 23d February, 1825, No. 20, I have the honor to forward the accompanying Returns, shewing the state of Crime and Punishment, according to Form No. 1, transmitted with Your Lordship's Despatch. It has not been in my power to obtain a regular series of these Returns; but I have urged the Acting Attorney General and the Magistrates to supply those which are deficient.

Mr. Garling, the Clerk of the Peace, has been repeatedly applied to for the Returns of the Trials by the Courts of Quarter Sessions, but without effect. I am consequently unable to transmit any Returns connected with the proceedings of those Courts.

I have, &c.,

RA. DARLING.

[Enclosures.]

[Copies of these returns are not available.]

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch marked "Separate." per ship John; acknowledged by Governor Darling, 1st December, 1827.)

28 May.

Sir,

Downing Street, 28 May, 1827.

Despatch
acknowledged.

I have had the honor to receive your dispatch, marked "Separate,"* in which you bring under the notice of His Majesty's Government a letter addressed to the Colonial Secretary by the Revd. Mr. Therry, the Roman Catholic Clergyman at New South Wales, together with a Minute of the Executive Council on the subject, to which that letter relates.

Disapproval
of conduct of
Revd. J. J.
Therry.

Had not directions been already given by my Predecessor for the removal of this Clergyman from the situation, which he holds in the Colony, the circumstances, which you have now reported connected with that Individual, would have induced me to adopt such a step, as I should have considered it no less due to the Colonial Government than to the established Institutions of the Colony to have objected to the further continuance of a Clergyman in the exercise of his functions, whether such person was of the Roman Catholic or Protestant Persuasion, who had been capable of conducting himself in so unbecoming a manner.

With reference to that part of Mr. Therry's conduct, which relates to his having solemnized a Marriage between a Catholic

* Note 87.

and a Protestant, and to the general question which arises out of that transaction as to the legality of such Marriages, I have to acquaint you that, according to the principle which has been laid down in England, I apprehend that Marriages, celebrated by a Roman Catholic Priest in the British Settlements abroad, to which Settlements the Marriage Act, 26 Geo. 2nd, Cap. 33, does not extend, would be held to be a valid contract.

In the particular case in question, the difficulty appears to have arisen from the Marriage being contrary to the Instructions, addressed by the late Governor Macquarie to the Roman Catholic Clergy, dated the 14 October, 1820. But, as he possessed no power of Legislation, he certainly could not make any Law at variance with a fundamental principle of the Law of England upon a subject so important as that of Marriage; and, therefore, upon the ground that those Instructions were illegal, I am of opinion that the Roman Catholic Priest cannot be considered as having acted improperly, however disrespectful may have been the language of his refusal in declining to adopt them as his guide.

I have, &c.,

GODERICH.

1827.
28 May.

Validity of
marriages by
Rev. J. J.
Therry.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Harmony.)

Dear Sir,

Downing Street, 28th May, 1827.

The accompanying paper has been handed to me by Captain Yorke, who is interested in the Welfare of the Writer; if, therefore, Mr. Lamb should be worthy of encouragement, you will oblige me by finding some means of employing him in a manner suited to his abilities.

I remain, &c.,

R. W. HAY.

Recommend-
ation of
W. B. Lamb.

[Enclosure.]

MEMORANDUM.

HAVING become a Settler in New South Wales with a Grant of Land of 3,000 Acres, and turning my attention to spending the remainder of my life in that Colony, I am anxious to procure any situation under the Government, either as Commandant of a district, usually given to Captains in the Army and Lieutenants in the Navy, or in the Revenue; I am well known in the Colony, and have been so for nine years, and particularly to the Govr., General Darling, and the Secretary, Mr. McLeay, also to the Colonial Agent, Mr. Bernard, in the Colonial Office.

(Signed) WILLIAM B. LAMB from Capt. Yorke.

Application for
appointment by
W. B. Lamb.

1827.
28 May.

UNDER SECRETARY HAY TO GOVERNOR DARLING.*

Dear Sir,

Downing Street, 28th May, 1827.

Order for
land grant
to Orr.

An Application having been made to this Department by Sir Nicholas Colthurst in favor of Mr. Orr, who is residing at New South Wales, and is anxious to obtain a Grant of Land, I have to request that you will comply with Mr. Orr's wishes, so far as may be consistent with the existing Regulations.

I remain, &c..

R. W. HAY.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch marked "Separate," per ship *Australia*; acknowledged by Sir George Murray, 30th August, 1828.)

'29 May.

Bill for duty
on newspapers.

My Lord,

Government House, 29th May, 1827.

It is my duty to bring under Your Lordship's consideration some particulars respecting the Act of Council, No. 3, which accompanies my Despatch No. 70, for imposing a stamp duty on News Papers, and I shall endeavour to do so in as few words as possible.

Form of bill
certified by
chief justice.

The Bill was prepared leaving, as had been usual in such cases, Blanks for the Amount of the Duties and Penalties, as I was desirous of receiving the opinion of the Council on this point, *fourpence* being inserted in the Margin, in pencil, opposite to the Blank left for the duty. In this form, the Bill was laid before the Chief Justice for his Certificate, as required by the 29th Section of the Act of 4th Geo. 4, Chap. 96, and was Certified accordingly.

Bill passed
by council.

It was then submitted to the Legislative Council, the whole of the Members being present with the exception of the Chief Justice, who was presiding at the Criminal Court. A Stamp duty of fourpence was agreed to, and the Council proposed an additional Clause respecting a Forgery of the Stamps, and, on receiving my assent, adjourned as the Chief Justice was not present. The Colonial Secretary acquainted me he saw Mr. Forbes the following Morning, and mentioned to him the purport of the Clause, and informed him of the Amount of the Stamp duty proposed by the Council, wishing to know if there was any objection on his part; and Mr. McLeay assures me that the Chief Justice made no objection to what was proposed. It being considered necessary, notwithstanding, to have the Chief Justice's Certificate to the additional Clause, the Clerk was directed, as soon as the Council assembled, to wait on the Chief Justice, who

* Note A.

was again attending the Supreme Court, to obtain his formal Assent to the Clause. The Clerk saw the Chief Justice, who desired him, as he could not then certify it, to inform the Council that he approved of it. The additional clause was then adopted, and, the Blanks left for the Duty, etc., being filled up, the Act was published.*

1827.
29 May.

Approved by
chief justice
and published.

It appears by the comments of the News Papers on this Act, which is of course extremely obnoxious to the Editors, that the "Australian" has come at the fact (extraordinary as it may appear, the Members and Clerk of the Council being all sworn to secrecy) of the Bill having been submitted to the Council with Blanks left for the duties, Penalties, etc., and has more than insinuated that the Chief Justice was not a party or privy to the Sum fixed as a stamp duty, and that consequently the Act is not legal.

Criticism
in press.

Secret
information
disclosed
to press.

Conceiving that the intention was merely to separate Mr. Forbes's Name from a Measure, which they were discussing in a very offensive manner, I paid little attention to their observations, and the matter rested until Yesterday, when I returned from Parramatta, where I had been a couple of days preparing my Despatches.

On my arrival in Sydney, the Colonial Secretary immediately waited on me and informed me he had seen Mr. Forbes the preceding day, who had expressed his doubts as to the legality of the Act in question, making use of precisely the same Arguments as those which had appeared in the "Australian." On this, Mr. McLeay observed that it was extraordinary he should not have communicated his sentiments to me before, particularly as he had seen him in conversation with me on Friday, only two days previous; and his delaying to do so was the more embarrassing, as the Act, which he now for the first time designated as illegal, was to come into operation almost immediately, on the 1st of June.

Legality of bill
questioned by
F. Forbes.

As soon as Mr. McLeay had made this communication to me, I wrote to the Chief Justice, requesting he would put me in possession of the particulars of his objections to the Act, that I might consider what steps it would be necessary to take. I have the honor to enclose for Your Lordship's information Copies of my Letter and of Mr. Forbes's Answer. I also transmit the Australian of the 25th Instant†; and it will appear to Your Lordship that the strict coincidence of the Article in that Paper with Mr. Forbes's Letter is not less extraordinary than the circumstance of Dr. Wardell, the Editor, having obtained the information (which ought to have been confined to the Council), on which he founded that Article.

Correspondence
with F. Forbes.

* Note 70. † Note 88.

1827.
29 May.

Summary of
F. Forbes'
letter.

I must now request Your Lordship's attention for a Moment to Mr. Forbes's Letter. He states that the Bill was transmitted to him, the Amounts of the Duties, etc., being left Blank; that he returned it as he received it; and that his certificate of course only went to the general principle of a Tax upon News Papers, reserving to himself, when the Bill should again be laid before him, how far any Tax when levied might consist with the provisions of the Law.

Criticism of
conduct of
F. Forbes.

Mr. Forbes, on all previous occasions to the passing of the Stamp Duty, had attended the progress of the Bills through the Council; and it was not conceived, by his not doing so on that occasion, that he meant to reserve to himself a right of disputing the legality of the Bill. Mr. Forbes was fully aware that *four-pence* was the sum proposed as the stamp duty, as it was inserted in the Margin, as I have already stated, when he Certified the Bill; and Mr. McLeay assures me that Mr. Forbes made no objection, when he informed him the Council had agreed to that Sum being fixed; still he remained silent for a period of three Weeks, during the whole of which time the Opposition Papers were abusing the measure and every Member of the Government, but himself, when at last, within four days of the Act coming into operation, he came forward; and it appears, by his Letter of the 28th, would take credit for "stepping perhaps a little beyond the exact path" of his duty, in informing the Government that the Act had not been legally passed.

His Honor, after thus stepping beyond the path of his duty to apprise me of the dilemma, in which the Government was placed, very Courteously offers his assistance and Co-operation to remove the embarrassment *as far as he can*. It will not I think be wondered at that I did not avail myself of his proffered aid. I replied to his Letter, as will be seen by the Enclosure No. 4, and I received an answer No. 5.

I may appeal to Your Lordship whether any thing can be more inconsistent in Spirit, if not immediately in terms, than his Letters of the 28th and 29th instant. It must be inferred from the former that submitting a Bill for his Certificate, in which there were Blanks, was at least objectionable; whereas in the latter, written the day after, he suggests that a Bill should be re-submitted to the Legislative Council without any Specification of the Amount of the Tax. I have, however, not yielded to this suggestion, but have stated that I conceive the Bill will be as open to discussion in Council with the Blanks filled up, as if no Amount was specified. I am besides yet to learn that Mr. Forbes has taken a correct view of the duties of the *Chief Justice* in supposing that the Certificate, which he is required to affix to a

Bill, has any reference to the particular points, which he proposes investigating in his Letter of this date; or if it be the province of the *Chief Justice* to determine, as he assumes in his Letter of the 28th, whether the Sum likely to be raised is or is not necessary for the purpose contemplated.

1827.
29 May.

Power assumed
by chief justice.

The Act of 4th Geo. 4, chap. 96, section 27, restricts the Governor and Council to imposing Taxes or Duties, excepting such as may be necessary for *local* purposes. The Colonial Ordinance, which forms the subject of this Letter, does not confine the proceeds of the Stamp Duty on News Papers solely to defraying the Expenses of printing and publishing the Acts, Proclamations, etc., of the Government, as might be supposed from Mr. Forbes's Letter of the 28th, but directs that the surplus, if any, shall be applied to the Police Establishment, which in this Colony is necessarily very expensive, amounting to nearly £19,000 a Year.

Power of
governor and
council to
impose taxes.

If Mr. Forbes's view of this matter be correct, and the Chief Justice is vested with a power of withholding his Certificate from a presumption on his part that the Money proposed to be raised is not necessary for the purposes of the Government, in the same manner, as when he considers any proposed Law to be repugnant to the Laws of England, the power of Legislating would in that case appear to be vested almost solely in the Chief Justice.

Effect of
opinion of
F. Forbes.

I regret the necessity of closing this Communication before the matter, to which it relates, is finally disposed of; but, as I am assured the Ship, by which I forward my Despatches, will sail early to-morrow Morning, I am unwilling to lose the opportunity of putting Your Lordship in possession of what has already taken place on this subject.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

GOVERNOR DARLING TO CHIEF JUSTICE FORBES.

Sir,

Government House, 28th May, 1827.

The Colonial Secretary having informed me that Your Honor had expressed some doubts as to regularity of the Act of the Legislative Council, No. 3, for imposing a stamp Duty on Newspapers, I request you will be pleased to state to me the doubts you entertain on the subject of the Act in question, that I may have an opportunity of judging of the steps necessary to be taken on the occasion.

Request for
statement from
F. Forbes.

I need not point out to You that the subject is of a pressing nature, as the Act, to which I allude, will come into operation on the 1st of next Month.

I have, &c.,

RA. DARLING.

[Enclosure No. 2.]

1827.
29 May.

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

Sir,

Sydney, 28th May, 1827.

Reasons of
F. Forbes for
doubting
validity of bill.

In Answer to Your Excellency's letter of this Morning, which I have only this moment received, in consequence of being in Court, I have the honor to inform Your Excellency that, in the bill proposing to levy a duty upon Newspapers, which was transmitted to me for my Certificate, the Amounts of the duties and penalties were left blank; and I returned it, as I received it, with my certificate, which of course only went to the general principle of a Tax upon Newspapers, reserving to myself, when the Bill should again be laid before me, to consider how far any tax, when specified, might consist with the provisions of the Law.

By the New South Wales Act, Sect. 27. it is required that no proposed ordinance should either be laid before the Council, or passed, without a Certificate under the hand of the Chief Justice to the effect required by the Act. I perceived by the Stamp Act, officially published in the Sydney Gazette, that the Amounts of the duty and of the penalties had been inserted, after the bill had been transmitted by me with my Certificate affixed. Consequently Your Excellency will perceive that I have not Certified the Act in question in the form, in which Your Excellency has promulgated it as a Law.

There appears to me to be another objection, arising under the 27th Sect. of the New South Wales Act; the ordinance proposes to raise a fund for a specific purpose, and imposes a Duty so far beyond the Amount, which in fair Calculation can be reasonably required for printing the public Acts, Orders, and proclamations of the Government, that it does appear doubtful to me how far the ordinance is consistent with the section of the Act alluded to.

Entertaining these doubts, I did not mention them to Your Excellency, until I had consulted the subject so frequently in my mind, as to warrant me in stepping perhaps a little beyond the exact path of duty, which had been laid down for my guidance. I can only express my readiness to co-operate with Your Excellency in any Steps, which Your Excellency may be advised to adopt, as far as I can.

I have, &c.,

FRANCIS FORBES, Chief Justice, N.S.W.

[Enclosure No. 3.]

[This was a copy of the issue of the "Australian"* newspaper, dated 25th May, 1827.]

[Enclosure No. 4.]

1827.
29 May.

GOVERNOR DARLING TO CHIEF JUSTICE FORBES.

Sir,

Government House, 29th May, 1827.

I have the honor to acknowledge the receipt of Your Letter of yesterday, and beg to observe, without entering into the question of any irregularity which may have taken place in passing the Act of Council, No. 3, as adverted to in Your Honor's Letter, that, the measure being conformable to my own views as also to those of the Legislative Council, which gave due consideration to the several Provisions of the Bill, the only course, which appears to be open to me, is to forward to you a fresh Bill, framed conformably to the Act above alluded to, and which I accordingly have the honor to transmit in order to its being Certified as required by the 29th Section of the 4th Geo. 4, Ch. 96.

I have, &c.,

RA. DARLING.

[Enclosure No. 5.]

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

Sir,

Sydney, 29th May, 1827.

I have the honor to acknowledge Your Excellency's Communication of this day, enclosing the draft of a New bill for imposing a duty upon Newspapers, the principle of which I can feel no difficulty in Certifying. As Your Excellency is already in possession of the doubts I entertain of the legality of the Amount of the duty, with reference to the declared purposes of the bill, I beg most respectfully to suggest that the measure should be resubmitted to the Legislative Council without any Specification of the Amount of the Tax. I shall then have an opportunity of entering into those examinations, which are indispensable to a right adjustment of the Amount of the duty with reference both to the public interests and the private income of Individuals. I feel the less difficulty in recommending this course, because it is the one that must naturally have been adopted, if I had received the first bill before the promulgation, and returned it with my objections, and as it would seem to be consistent with the duty vested in the Chief Justice, independently of his being a Member of the Legislature.

Proposal by
F. Forbes for
re-submission
of bill to
council.

I have, &c.,

FRANCIS FORBES, Chief Justice, N.S.W.

1827.
29 May.

GOVERNOR DARLING TO SECRETARY OF STATE.
(Despatch per ship Australia.)

Transmission
of copies of
Sydney Gazette.

Sir,

29th May, 1827.

Conformably with my Instructions to this effect, I have the honor to transmit for Your information the *Sydney Gazettes* from the 27th of March to the 30th of the present Month.

I have, &c.,

RA. DARLING.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch marked "Circular No. 2," received *via* Hobart Town; acknowledged by Governor Darling, 26th February, 1828.)

30 May.

Instructions re
land adjacent
to military
works.

Sir,

Downing Street, 30 May, 1827.

In consequence of a communication, which has been received from the Master General and Board of Ordnance, representing "the inconvenience which generally arises from alienating Crown property or land situated within a certain distance of Military Works or Buildings," I have to desire that it may be fully understood by you that no Crown property or land, situated within a certain distance of any fort, barrack, magazine, or military Establishment, is to be alienated or granted to private individuals without a previous reference to the Master General and Board of Ordnance, accompanied by a sketch and report from the Commanding Engineer on the spot.

I have, &c.,

GODERICH.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch marked "Separate," per ship Australia; acknowledged by Sir George Murray, 30th August, 1828.)

My Lord,

Government House, 30th May, 1827.

Correspondence
with
F. Forbes.

Finding that the Ship has been detained, which I mentioned in my Despatch of yesterday, marked *Separate*, was to sail this Morning for England, I avail myself of the opportunity of communicating to Your Lordship the result of the correspondence with the Chief Justice, the commencement of which I had the honor of putting Your Lordship in possession of with my Despatch, above alluded to.

On receiving Mr. Forbes's Letter of the 29th Instant, a Copy of which accompanied my last Despatch, suggesting "that the measure (under consideration) should be resubmitted to the Legislative Council without any Specification of the Amount of the Tax," I addressed a Letter in reply, of which I have the honor to enclose a Copy, stating that, as he had considered the Bill informal, when the Blanks were not filled up, I had remedied that defect in the present Bill, which was a perfect transcript of

the one, which had passed the Council, and that I was not aware that (being brought forward as a New Bill) this circumstance would prevent discussion as to the Amount of the Duty to be levied.

1827.
30 May.

Conceiving that the Chief Justice would probably certify the Bill in this form, I summoned the Legislative Council that they might be prepared to take the subject into consideration. But I received a Letter from him, of which the enclosed is a Copy, signifying that he could not Certify the New Bill, and urging a reconsideration by the Legislative Council of the *first* Bill, which he stated had not been disposed of according to the provisions of the New South Wales Act.

Refusal of
F. Forbes to
certify bill.

I beg Your Lordship's attention to my reply to the above, stating, as the Legislative Council had agreed to the first Bill, which is testified by the Signature of all the Members (with the exception of Mr. Forbes's) on the face of the Bill, it did not appear to me that any discussion on *that* Bill could be entered into with propriety.

It will be observed in my Letter, now referred to, that I have remarked on a passage in Mr. Forbes's of the 29th instant, proposing that the original Bill should be again submitted to the Council, "in order (as he states) that the several functionaries may agree in forming a suitable Law." I can only repeat here, what I have stated to the Chief Justice, that, according to my Construction of the New South Wales Act (but I offer my opinion with every possible deference), it does not appear to me to be the province of the Council to form Laws, or that it is competent to him, as Chief Justice, to give any other opinion in Council than as a Member of that Body. It will be seen, on reference to the 2d paragraph of Mr. Forbes's Letter of the 28th instant, that he considers it to be the business of the *Chief Justice* to see that the Amount of the Duty to be raised is not greater than is necessary to meet the Expense to be provided for. He states, in that paragraph, that the Ordinance proposes to raise a fund for a "Specific purpose." The 27 Section of the New South Wales Act authorises the Governor and Council to levy such Taxes or Duties, as may be necessary for *local* purposes, the purposes, to which such Taxes or Duties are to be applied, being distinctly stated in the *body* of every Law imposing such Tax or Duty. In this respect, the Colonial Ordinance is in strict Conformity with the New South Wales Act, it being provided by the 8th Section of the Ordinance that, after paying the Expenses of Printing on Account of Government, the surplus "shall be applied towards defraying the Expenses of the Colonial Police."

Respective
duties of
governor, chief
justice, and
council.

1827.
30 May.

Claim of
F. Forbes to
control taxes.

It will further be seen on reference to the conclusion of his Letter of the 29th of May, which accompanied my Letter of Yesterday, that he considers it "to be consistent with the duty vested in the Chief Justice, independently of his being a Member of the Legislature," to enter "into those examinations, which are indispensable to a right adjustment of the Amount of the duty, with reference both to the public interests and the private Income of Individuals." For my own part, I cannot discover that there is anything in the New South Wales Act, which renders this the duty of the *Chief Justice*, or that he has any other to perform in this case than to see that the Bills, submitted to him by the Governor, are not repugnant to, but consistent with the Laws of England; and I beg it may be kept in mind that he had, in the first instance, previous to the Bill in question being laid before the Legislative Council, affixed his Certificate to it to this effect.

Effect of
action of
F. Forbes.

In making the foregoing observations, I am aware that the consideration of the points, alluded to, belongs to the Chief Justice, as a Member of the Legislative Council, in common with the other Members; but I have not been able to satisfy myself that it is otherwise the province of the Chief Justice. If it is not, it will be seen that, by the assumption of this power, Mr. Forbes has deprived the Government of the means of relieving the public from a very grievous burthen, incurred for Printing the public Documents, the Forms, etc., required by the different Departments, and for maintaining the Colonial Police, which, taken together, do not Amount to a less Sum than £20,000 a Year.

Refusal of
F. Forbes
to certify
first bill.

Perceiving by Mr. Forbes's Letter of the 29th, already referred to and enclosed herewith, that he would not Certify the new Bill, I was induced, as has been seen by my Letter of the 30th instant (this date), to propose his re-certifying the original Bill, in order to its more perfect Validity; and, had he done so, I should have published it again, with a view of rendering the Act according to his opinion strictly legal. But it will be seen, by the Enclosure No. 3, that he has also declined re-certifying that Bill, in Consequence of the Stamp duty, recommended by the unanimous voice of the Legislative Council (Six Members being present), being higher than *he individually* considers necessary. The measure will consequently fall to the ground, as the Act, which is stated by the Chief Justice to be illegal, must be immediately rescinded.

As Mr. Forbes has adverted, in his Letter just referred to, to *my* duty under the New South Wales Act, I am induced to observe that the same course of proceeding in the Legislative Council, which I found to exist on my arrival, has from a sort

of necessity been permitted to continue. An indisposition to anything like form was evident; And the present system, which no doubt is extremely irregular, obtained ground during the late Administration, when Mr. Forbes governed its Councils. He has hitherto taken the Management of the Bills almost exclusively into his own hands; and I cannot subscribe to the justice of his adverting to the informality on the present occasion, or understand the ground of his doing so, unless it be from the Circumstance of his advice with respect to the measure not being implicitly adopted.

1827.
30 May.

Informal
methods in
legislative
council.

As to his denying his assent to the Stamp duty, I can only repeat here, as I stated in my Letter of Yesterday, that Mr. McLeay, when he informed him it had been fixed at *fourpence*, understood *distinctly* that he Concurred. But it is evident sufficient importance was not attached to the Circumstance, which can only be accounted for from Mr. Forbes having already Certified the Bill, and the Amount of the duty being considered more immediately a Matter for the Consideration of the Legislative Council. It may be proper to observe here that I have not attended during the deliberations of the Legislative Council, Mr. Forbes having informed me on my arrival that it had not been customary, and would not perhaps be altogether consistent for the Governor to be present during the discussion on Bills submitted by himself.

The question of
stamp duty.

Absence of
governor from
legislative
council.

I regret extremely, My Lord, the necessity of trespassing so much on Your Lordship's time; But it has been unavoidable. It is an indispensable duty on my part to put Your Lordship in full possession of the case. I am aware of the want of strict attention to form in the matter, now under consideration. But irregularity and informality have been so general, and have prevailed in every branch of this Government to so unexampled an extent that it has not been easy to determine where to begin or how to proceed in effecting a Salutory reform.

Your Lordship is aware of the embarrassing Nature of the Situation, in which I am placed, without a single person on the Spot capable of affording me legal Advice; And with a Chief Justice, whose object it is evident, from the statement I have now had the honor to lay before Your Lordship, has been to take advantage of that situation.

Want of legal
assistance for
governor.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

GOVERNOR DARLING TO CHIEF JUSTICE FORBES.

Sir,

Government House, 29th May, 1827.

I am this moment honoured with the receipt of Your letter, and beg to state in reply that the Bill has been submitted

1827.
30 May.
Submission
of bill.

to you in its present form from an impression that you considered it incomplete, when Blanks were left. The Bill is as open to discussion in the Legislative Council, as if the amounts of the proposed duties and Penalties were not inserted. I cannot, therefore, discover any objection to its being submitted to the Council as it now stands.

I have, &c.,

RA. DARLING.

[Enclosure No. 2.]

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

Sir,

Sydney, 29th May, 1827.

Proposal for
submission of
first draft bill
to council.

I was in the act of replying to Your Excellency's last communication of this day's date, when I received a Summons to attend the Legislative Council to-morrow at one O'Clock. It appears to me that a discussion, which must be very troublesome to Your Excellency, and which is very painful to me, may at once be put an end to by adopting the following suggestion; the first bill, which I certified in blank, leaving the amount to be filled up by the Council, is still in *Statu quo*, and not in any manner invalidated by a premature publication of it as law; the publication is in fact a nullity, and leaves the bill just where it was, not having yet completed the several stages, through which it must pass before it can become a law, according to the provisions of the New South Wales Act. My Letter of yesterday contains the grounds of the objections, which have presented themselves to my certifying the bill in the altered form returned by the Council. Your Excellency, therefore, has a sufficient case raised to submit the bill to the Legislative Council for reconsideration, in order, if possible, that the several functionaries may agree in forming a suitable law.

The new bill, which Your Excellency enclosed me this morning, being a literal copy of the former, as amended by the Council, falls of course within the same principle of objection; and Your Excellency must perceive that I cannot consistently Certify it.

I have, &c.,

FRANCIS FORBES, Ch. Justice, N.S.W.

[Enclosure No. 3.]

GOVERNOR DARLING TO CHIEF JUSTICE FORBES.

Sir,

Government House, 30th May, 1827.

I am this moment honored with the receipt of your second Letter of yesterday, and beg to state in reply that the Legislative Council having agreed to the Bill, as it now stands, I am not aware of the object of any further discussion on the subject, or that it could with propriety be entered into. The publication of

the Bill took place, in consequence of its being understood that you had assented to the several additions and amendments, though, from the circumstance of the moment, you did not affix your Certificate a second time to the Bill, after the Blanks had been filled up.

1827.
30 May.

Reply to
proposal of
F. Forbes.

I am not sure that I perfectly understand the passage in your Letter, which states, "Your Excellency, therefore, has a sufficient case raised to submit the Bill to the Legislative Council for reconsideration, in order, if possible, that the several functionaries may agree in forming a suitable Law."

It does not appear to me that it is the province of the Council to form Laws, or that it is competent to Your Honor to give any other opinion in Council than as a Member of that body.

Admitting, as Your Honor states, that the publication of the Bill in its present form was irregular, I have now the honor to transmit it to you in order to its receiving Your final Certificate, should you, on reconsideration of the matter, be induced to approve of it as it now stands.

Bill submitted
for certificate.

I have, &c.,

RA. DARLING.

[Enclosure No. 4.]

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

Sir,

Sydney, 30th May, 1827.

In answer to Your Excellency's Letter of this morning's date, I beg to say that my last communication of yesterday was sent to Your Excellency's House last evening, and by my orders directed to be left on your table, in order that Your Excellency might receive it, as soon after your return from Parramatta as possible, this morning.

Your Excellency is pleased to state that the publication of the bill took place in consequence of its being understood that I had assented to the several additions and amendments, though, from the circumstances of the moment, I did not affix my Certificate a second time to the bill, after the blanks had been filled up. This is a grave charge, and it would not become me to meet it by pointing out Your Excellency's duty under the Act. I beg leave, however, to take issue on the fact, and to say that I never did directly nor indirectly authorize any such understanding of my having assented to the amount of duty, which is the essence of the Bill.

Circumstances
of publication
of bill.

I have the honor to re-enclose it to Your Excellency and to inform Your Excellency that I cannot certify it in its present form, for reasons which I have stated in my Letter of yesterday.

Refusal to
certify bill.

I have, &c.,

FRANCIS FORBES, Ch. Justice, N.S.W.

1827.
30 May.

GOVERNOR DARLING TO UNDER SECRETARY HAY.
(Despatch marked "Private," per ship Australia.)

My dear Sir.

Government House, 30th May, 1827.

Criticism of
conduct of
F. Forbes.

I assure you that the necessity of taking up so much of your time is little less vexatious to me, than the matters which occasion it. I may say to you, in this place, that Mr. Forbes kept intentionally away from the Legislative Council during the consideration of the Stamp Act. He said so in a conversation with Mr. McLeay. He knew the measure would be obnoxious, and he would not risk his popularity. You cannot fail to observe the management he resorted to. He lay by without breathing a word on the subject of the illegality of the Bill, until the Papers had discussed it for a period of three Weeks. Had it passed over in silence, he never would have noticed the circumstance; but, as he found it was unpopular, he took the opportunity of coming forward at the *last* moment to declare he had no hand in it. His proceeding has been calculated to preserve his popularity, *or rather the good report of the Editors*; or to lay a Trap for me. As to any irregularity in passing the present Bill, it has not been greater than on former occasions; and I assert that whatever irregularity has taken place is wholly attributable to Mr. Forbes, who has, in fact, managed the Proceedings of the Council as far as relates to the passing of Acts. He now admits that the Proceedings on former occasions have been irregular; but, he says, "a Blot is no Blot till it is hit." I have just seen Mr. McLeay, and have enquired more particularly as to the circumstances of Mr. Forbes having kept away from the Council, as stated at the commencement of my Letter; and he assures me that Mr. Forbes told him distinctly he had done so intentionally. I can immediately furnish a proof of his irregularity in reference to the Proceedings in Council. My Instructions require he should lay a Report before me of all Persons sentenced to suffer death. He has never done so in a formal manner, as required by the Instructions, but submits his Notes taken on the Trial. This is perhaps as satisfactory a course; but it is not according to the King's Instructions, with a copy of which I furnished him on my arrival. And further he advised me, on a late occasion when Mr. Justice Stephen made a report in a similar manner to that now pointed out, that in consequence of the confused and unsatisfactory way, in which he explained the Cases, he should be required in future to report formally, as pointed out by the public Instructions. It is, however, unnecessary to produce such instances. They have been general, and, now Mr. Forbes has shown his disposition, they must be corrected.

I have not put up the Bill referred to in my "Separate" Despatch of this date, designated the "New Bill," but now enclose it that you may refer to it, if necessary. It is, however, literally the same as that forwarded with my Despatch No. 70.

1827.
30 May.
Transmission
of bill.

I have written in the greatest haste, and only hope I have expressed myself intelligibly.

I remain, &c.,

RA. DARLING.

[Enclosure.]

[*A précis of the bill will be found in note 70.*]

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(A private despatch per ship Australia.)

My dear Sir,

New South Wales, 30th May, 1827.

1. I am desirous of saying a few words to you on the subject of my Despatch, No. 48,* with the Report of the Board appointed to consider the subject of the *Salaries*, and to express my opinion that none of them can be rated lower, either with Justice to the Service, or with reference to those lately established at Home. I have gone through the whole with the utmost Attention, and I am satisfied that competent Persons of respectable Character could not be obtained at a lower rate. But you will be able to judge of them by comparing the amount with other Colonies in this part of the World.

Revision of
scale of
salaries.

2. As to the *Clerks*, the Scale, which was established last Year and communicated in My Despatch, No. 39,* has entirely failed, and the Departments are still burthened with *Convict* Clerks, who are playing all sorts of tricks. The fact is the Mercantile Houses are so anxious to engage Young Men of integrity that they commonly give £200 and £250 a Year, so that the Public Offices find it impossible to retain the Clerks at the rate notified in my former Letter. Both the Colonial Secretary and the Auditor have repeatedly informed me of the impossibility of Completing their Offices; and they are in fact so much underhanded that the business of their Departments is much in arrear; and the Clerks will not submit to the Confinement, to which they are at present subjected. I am so well satisfied of the fact from my own knowledge that I have desired the Colonial Secretary and the Auditor to report to me that some efficient arrangement may be made. I am anxious you should be aware of this that Lord Bathurst may not suppose I am acting inconsiderately in proposing so general an augmentation as I have done. Some of

Difficulty
in procuring
clerks.

* Note 89.

1827.
30 May.

the Departments have been little short of clamorous on the subject of their Salaries; and it is undoubtedly necessary to keep pace with the changes, which have and are generally taking place in the Colony, where living is so expensive, or the Government will find it is pursuing a false œconomy.

Proposed
appointment
of writers.

3. I shall be very glad to see a reinforcement of Writers from Home for the Public Departments, conformably to the Plan you have mentioned.

I am satisfied the institution will be attended with the most beneficial effects here. An infusion of respectable Young Men will give a Character to our public Offices, which they are very much in need of. I shall make a point of sending you by the next opportunity a more matured Plan, as I promised, of my views in this respect, than my former Communication Contained.

Diversity of
subjects for
consideration
of governor.

4. You will see by the number and multifarious nature of my Despatches, even by the present occasion, how we are employed. The necessary Consideration of the several subjects has occasioned me infinite labour and anxiety. The Communication of the results thus submitted, as you must be aware from experience, is the least troublesome part of the business.

It is the digesting and arranging and modifying measures, before they can be acted on or brought into operation, which fatigue and exhaust the mind; and, when for example this is applied to the numerous important subjects, which I have had occasion to write upon by this opportunity, you will be satisfied that the Conduct of the Government leaves me without one moment's relaxation.

Establishment
of customs
house.

5. As soon as the Vessel, by which I now write, has sailed, I propose completing the Custom House Arrangements.

You will not think me premature in this, when you are apprised it is from a Conviction of the benefit which will accrue to the Public by it. The Revenue will, I am satisfied, be *considerably* increased, so that the addition of a few hundreds a Year to render the Establishment efficient will be profitably expended.

I must mention, while on this subject, that the Supereession of the Persons, whom I have appointed, would be attended with much embarrassment, as some of them have abandoned other pursuits and have now a right to look to the Government for an equivalent. I had no other Course. It was of the very first importance to obtain respectable Men. Personally, I am not interested in their Confirmation. They have not been selected as

friends of mine, but from an opinion that their appointment would benefit the Service. I have been guided *solely* by this feeling, knowing its importance from sad experience.

1827.
30 May.

As the Communications made by this opportunity are numerous, and several of them on subjects of some importance, I enclose an Abstract that you may see the whole at one view, and be enabled to judge to which it may be necessary to give immediate attention.

Summary of
despatches.

I remain, &c.,

RA. DARLING.

[Enclosure.]

[*This return briefly specified the subject matter of the despatches to Earl Bathurst numbered 46 to 72, and the separate despatches, dated 6th, 10th, 18th, 29th, and 30th April and 10th, 24th, 29th, and 30th May; also despatches to under secretary Hay, dated 2nd, 4th, and 15th April and 14th, 15th, and 30th May, 1827.*]

GOVERNOR DARLING TO EARL BATHURST.

(Despatch marked "Separate," per ship Australia; acknowledged by right hon. W. Huskisson. 31st October. 1827.)

My Lord,

New South Wales, 31st May, 1827.

31 May.

I had the honor of putting Your Lordship in possession of a representation, made by Archdeacon Scott against Mr. Justice Stephen, in my Letter of the 24th ultimo, marked "Separate."

I had not heard from Mr. Stephen until the night of the 28th of May (nearly Six Weeks after the Archdeacon's Statement had been Communicated to him), being the Eve of the expected departure of the Ship "Australia," which, however, has been detained till the present moment. I then received from Mr. Stephen a Letter, of which the enclosed is a Copy, with three packets addressed to Your Lordship; and Conceiving, from the Circumstance of Judge Stephen's reply to the Archdeacon's Statement being *sealed*, that it was intended to set the Government aside, and not to afford me an opportunity of offering any Explanation of the Case, though required by Your Lordship's Instructions, which have been duly promulgated for the information of the Public, I considered it incumbent on me to return to Judge Stephen the Letter addressed to Your Lordship, with a Communication, of which I do myself the honor to enclose a Copy for Your Lordship's information.

Reply by
J. Stephen to
complaint of
T. H. Scott.

I have felt it my duty to put Your Lordship in possession of this Circumstance, as it is not improbable that Judge Stephen

1827.
31 May.

may now transmit his reply to the Archdeacon's Complaint direct to Your Lordship; and I am desirous Your Lordship should be aware that the irregularity is in no respect attributable to me.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

JUDGE STEPHEN TO GOVERNOR DARLING.

Sir,

Ultimo House, 28th May, 1827.

J. Stephen's
reply to
complaint of
T. H. Scott.

I now do myself the honor of transmitting my answer to the Venerable Archdeacon Seott, which I have to request Your Excellency to forward by the "Australia" to the Earl Bathurst, that he may be furnished by the same opportunity with the Accusation and the defence.

As Your Excellency has been furnished with the Venerable Archdeacon's charges against me, it will afford me much satisfaction in laying before you my refutation of these unjust and unmerited Charges, as soon as I have prepared Copies of my Despatches to His Lordship, and Your Excellency's leisure will permit you to examine them.

I have, &c.,

JOHN STEPHEN.

[Enclosure No. 2.]

GOVERNOR DARLING TO JUDGE STEPHEN.

Sir,

Government House, 29th May, 1827.

I have had the honor to receive Your Letter of Yesterday, accompanied by three Packets addressed to the Secretary of State, Containing as you inform me Your "Answer to the Venerable Archdeacon Seott," and requesting I would forward the same by the Australia.

Refusal of
governor to
transmit sealed
packets.

I beg to point out that the Course, you have adopted, does not appear to accord with the intentions of the Regulations, promulgated by the order of the Secretary of State, which requires that His Majesty's Ministers should be furnished with any explanations the Governor may have to offer on the several points of Complaint.

As from the Circumstance of your Reply being sealed, I am precluded from furnishing any explanation of the Case, And Your Communicating to me at some future period, as you propose, Your refutation of the Archdeacon's Complaint would not answer the intention of the Regulation, alluded to, I have felt it my duty to return the Letters addressed to the Secretary of State, in order that you may have an opportunity of Conforming to the Regulation in question.

I have, &c.,

RA. DARLING.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 6, per ship Cambridge: acknowledged by Governor Darling, 1st October, 1827.)

1827.
1 June.

Sir,

Downing Street, 1 June, 1827.

I have to acknowledge the receipt of your several Despatches as enumerated in the inclosed List, and I shall take an early opportunity of conveying to you His Majesty's Commands upon such of them as may require answers.

Despatches
acknowledged.

I have, &c.,

GODERICH.

[Enclosure.]

[*This list detailed the despatches numbered 78 to 98 of 1826; those marked "Separate," dated 21st and 27th October and 7th and 19th December; those marked "Private," dated 7th and 16th December; those marked "Secret and Confidential," dated 24th November and 15th and 17th December; and despatches dated 1st and 24th November, and 12th, 15th, 16th, 18th, and 20th December, 1826.*]

GOVERNOR DARLING TO EARL BATHURST.

(Despatch marked "Separate," per barque Faith: acknowledged by Sir George Murray, 30th August, 1828.)

My Lord,

Parramatta, 1st June, 1827.

I have the honor to acquaint your Lordship, in reference to my Despatches of the 29th and 30th ult., marked "Separate," that I assembled the Executive Council to consider as to the best mode of rescinding the Act, No. 3, which accompanies my Dispatch No. 70, and I do myself the honor to transmit a copy of the "Notice," which has been published to that effect.

Rescission
of act No. 3.

The Chief Justice took the opportunity of urging that the matter should be resubmitted to the Legislative Council; but, as he persisted in his right as *Chief Justice* to control the amount of the Tax, and declared he would not sanction so high a Tax as *four pence* on Newspapers, while *all* the other Members had concurred in fixing that sum, I felt there would be no use in acceding to his wish, and that, by doing so, I should in effect subscribe to the right, which, though without remedy, I must think he has unwarrantably assumed.

Action of
chief justice.

Mr. Forbes mentioned that he had consulted Mr. Justice Stephen, who concurred with him as to the illegality of a Tax to such an amount as that which has been fixed, and he intimated that they could not consider the Act binding, should any of the Proprietors of the Newspapers bring the matter into the Supreme Court.

Consultation
between Judges.

1827.
1 June.

Statement by
F. Forbes.

Immediately after the breaking up of the Council, I received a letter from Mr. Forbes, which he has informed me was preparing, in order to bring the whole subject under one view. It has occurred to me that, by subjoining my "Remarks" on the different passages of his Letter, the question will be the better understood. I have done so accordingly, and have the honor to transmit copies of both Papers for your Lordship's consideration.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

GOVERNMENT NOTICE.

Public notice
for rescission of
act re press.

WHEREAS a certain Bill, purporting to be an Act, intituled "An Act for imposing a Duty on all Newspapers and Papers of a like nature, printed to be dispersed and made public," hath been published in the Sydney Gazette, bearing date the 4th instant, and the said publication being premature, Notice is hereby given to such effect; and further that all matters and things in the said Bill contained will be suspended, until full and effectual provision shall be made in respect of the same in due course of Law, and the same shall be published accordingly.

By Command of His Excellency The Governor,

ALEX. MCLEAY.

31st May, 1827.

[Enclosure No. 2.]

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.*

Sir,

Sydney, 31st May, 1827.

Statement by
F. Forbes of
his actions re
bill for duty
on press.

The occasion, on which I received Your Excellency's letter of yesterday's date, was too urgent to admit of my answering it in more than general terms at the time.

I, therefore, avail myself of the earliest moment to inform Your Excellency of my motive in recommending the Bill for imposing a Stamp duty to be submitted for the consideration of the Legislative Council.

In order to prevent misapprehension, I must beg your Excellency's patience, while I take a short retrospect of the events connected with the Bill, up to the date of my letter to your Excellency.

Your Excellency did me the honor to enclose the Copy of the Bill, while I was in the Country on the 11th day of April last, for my Certificate. The professed purpose of the Bill was to provide a fund for defraying the charge of printing the Public Acts, Proclamations, Orders, and Notices of the Government, by means of a Stamp duty on Newspapers; the amount of the duty was left blank with a view, as I conceived, of leaving it to the Council to fix such a rate of duty, as would be adequate to the professed objects, for which it was imposed. I returned the Bill

* Note 90.

in the same form as I received it, with my certificate, which of course only went to the general principle of the legality of such an Act, as that which was submitted to me. The Bill was laid by Your Excellency before the Council about the 23rd of April, read a first time for the sake of form, and postponed for consideration until the 2nd of May.

That month is, by the Rules of the Supreme Court, appropriated to the delivery of the Gaols, and your Excellency is aware, from the pressure of business in the Court, that its appointed sittings cannot be altered without producing great derangement throughout the whole course of its proceedings. It happened, unfortunately, that, on the day of opening the Court, Mr. Justice Stephen was seized with the Gout and obliged to retire, and the whole business necessarily devolved upon me. On the morning appointed for the consideration of the Bill, the members of the Legislative Council met pursuant to adjournment, and, while I was sitting in Court, I received a message by the Clerk of the Council, stating, as I understood him, that the Council were waiting for me. I, of course, desired him to inform the Council that I was engaged in the Supreme Court; upon which I understood the Clerk to say that the Council wanted my opinion as to the propriety of introducing a clause to make it a transportable offence to counterfeit stamps on Newspapers. I have but a very indistinct recollection of the answer I gave, for I was in the act of trying a serious case of capital felony; but I am told by the Clerk that I desired him to say I saw no objection to such a Clause, and that he reported the same to the Council.

On the following morning, just as I was about going to Court, I was honored by a Call from the Colonial Secretary, who spoke to me, as he has since told me, upon the subject of the Act generally, but, as I only recollect from the impression it has left, with reference to the new Clause, added at his suggestion by the Council. I cannot be held answerable for loose opinions given in this way. Any man, versed in the abstracting business of the Law, must know that they are frequently mechanically pronounced, while the attention is engaged on another subject. If I expressed any general assent to the stamp duty of fourpence, as Mr. McLeay supposes I did, I can only say that it was so utterly unconscious on my part that I desire to be understood, as using the most solemn form of adjuration which can be used, in declaring that I have no recollection of giving such assent, and that my mind's attention was never for once seriously drawn to the amount of the duty, until I saw it promulgated in the Sydney Gazette.* I had of course supposed that the Bill must

1827.
1 June.

Statement by
F. Forbes of
his actions *re*
bill for duty
on press.

* Marginal note.—No. 1.

1827.

1 June.

Statement by
F. Forbes of
his actions re
bill for duty
on press.

be regularly laid before me for my certificate, before it could be passed; and then would be the time for me to read it with care, and determine upon the legality of its provisions. How could I for an instant suppose that this ceremony would be dispensed with?*

I understood that, as soon as the Council had agreed upon the amount of the duty, the Bill was transmitted to Your Excellency, and by Your Excellency returned to the Council; by whose direction, the King's Printer was ordered to attend the Council Office, a fair Copy immediately made, and sent off for publication in the Gazette of the following morning: and all this without the slightest consideration of the Office, which I, as Chief Justice, had to perform, and contrary to my declared opinion in Council only the week before, in the presence of the Colonial Secretary, that any alteration in any Bill rendered it necessary to be re-certified by me.†

Your Excellency has been pleased to inform me that the publication of the Bill took place in consequence of its being understood that I had assented to the several additions and amendments, though I did not affix my certificate a second time to the Bill, after the Blanks were filled up. Your Excellency of course assumes such to have been the understanding, upon the statement of the Colonial Secretary; for, with no other person whatever, had I ever interchanged a word upon the subject. Now it is supposable that Mr. McLeay may have misunderstood me; that I may have given an unconseious assent to the Bill; that my opinion may have been inconsiderately given; but I may be permitted to ask, could it be assumed that I intended to give a judicial opinion upon the amount of a Tax, without having had the means of referring to the data, upon which it was adjusted, or of judging how far it was conformable to the Act. Upon a Felony, without reading even that clause which created it? Your Excellency has had some experience of the exactness; with which I endeavour to discharge my official duties; upon what occasion was I ever known to do business in this way before.‡ I deny that I ever did assent to the Bill, as filled up by the Council, or that the Colonial Secretary ever was upon any occasion authorized by me to give my assent to the Bill, or to pledge my certificate as to its legality.§ The wise provision of the Act of Parliament, which requires my handwriting, was intended to guard against this sort of misapprehension and misunderstanding, and why it was dispensed with on this single occasion is more than I can imagine.

† *Marginal note.*—No. 3.* *Marginal note.*—No. 2.‡ *Marginal note.*—No. 4.§ *Marginal note.*—No. 5.

It is too apparent to admit of doubt that the Stamp duty would be followed by other consequences than that of providing a fund for the purposes it proposes.

1827.
1 June.

A few incontestible data must fully establish the fact. It is stated by the Government Printer in his remonstrance to the Council that hitherto it has cost the Public nothing for publishing their Acts and Orders in the Papers; and, for the printing them again in the form to be bound up, the charge, as appears by the first half of last year's Expenditure, does not exceed £120 per annum. To raise a Fund for defraying this or some other reasonable amount, the Bill proposed to levy a duty of 4d. upon every Newspaper published within the Colony. Now it appears, from the same statement, that the number of copies of the *Sydney Gazette* distributed weekly is upon the average about two thousand; supposing the actual number sold amount to eighteen hundred copies, and to them add twelve hundred of the *Australian*, and five hundred of the *Monitor*, which appears from the respective statements of those Papers published some time since, and which I have heard, upon enquiry, to be the correct amount, and this will give an aggregate number of one hundred and eighty two thousand Papers, dispersed in the course of the year, upon which a duty of four pence ought to realize a revenue of three thousand pounds and upwards, an amount so extravagantly disproportionate to the objects proposed by the Act, that it were absurd to suppose the duty was imposed merely for such purposes.* That this amount of revenue would not in fact be raised, I perfectly well know, and this is the point I wish to arrive at. The Colonial Secretary, in our conversation upon the subject last Sunday Morning, admitted that, in consequence of the high rate of duty, the sale of the Newspapers would be so depressed that it was calculated they would not realize more than Five Hundred pounds per annum; and that such a sum or thereabouts would be paid by Government as the annual stipend for the printing of a Government Gazette. By the admitted operation of the duty, then, the Publishers of Newspapers would be deprived of their trade, and the Government Paper would be the only one worth the trouble or expense of publishing. I speak of this merely as a consequence of the Stamp Act. I do not ascribe it as a motive; but the effect is precisely the same, and renders the duty oppressive and contrary to the provisions of the Law and every admitted principle of taxation.†

Criticism of
proposed
amount of tax.

It is stated by Mr. Justice Blackstone as the Law that "the things to be arrived at are wisdom and moderation, not only in granting, but also in the method of raising the necessary supplies; by contriving to do both in such a manner, as may be most

Statement in
"Blackstone."

* Marginal note.—No. 6.

† Marginal note.—No. 7.

1827.
1 June.

conducive to the national welfare, and at the same time most consistent with the liberty of the subject, who, when properly taxed, contributes only some part of his property in order to enjoy the rest.”*

Provisions *re*
taxation bills.

In furtherance of this legal principle, the New South Wales Act provides that the purposes, for which every Tax may be imposed, and to which the amount is to be appropriated, shall be distinctly and particularly stated in the Body of the Law imposing such Tax.† Bringing the Four penny Stamp Bill to the test of the Law, and looking at the broad facts before me, how was it possible to shut out the conclusion that the Bill had other objects in view, than such as were openly expressed, and in its consequences must work the ruin of those persons, whom it professed merely to tax? And how can this be reconciled either with the general principles of English Law or the provisions of the New South Wales Act?‡

Reasons for
re-submission of
bill to council.

I beg now to offer a few words in explanation of my reasons for recommending this matter to be resubmitted to the Legislative Council.

I was willing to believe that the premature publication of the Bill had arisen from an irregularity in the Council Chamber, and that Your Excellency in re-assembling the Council would have an opportunity of stating my doubts about the legality of the Bill in the amended form they had returned it. The Council could then either have considered it or not according to their discretion. In doing this, I am not aware there would have been any deviation from the New South Wales Act.§

Your Excellency makes Laws with the advice of the Council, so does His Majesty with the advice of Parliament. These words were used advisedly; and though they do not convey an originating power, yet it is competent to the Council to recommend the form in which they will receive a Bill,|| and equally so to the Chief Justice, in pointing out his legal objections, to advise the Governor or the Council as to the form in which he would be prepared to affix his certificate to any proposed measure of Legislature. I will add that I had another object in view; it was that your Excellency should afford the Council an opportunity of re-considering their proposed Tax.¶ Your Excellency will bear in recollection that all local Laws must be laid before the Parliament at stated periods; and, in the exercise of the very extensive and delicate trust reposed in the few members, who compose the Legislature of this Colony, Parliament will naturally look for more than an ordinary degree of moderation and discretion. And

* *Marginal note.*—No. 8.
§ *Marginal note.*—No. 11.

† *Marginal note.*—No. 9.
|| *Marginal note.*—No. 12.

‡ *Marginal note.*—No. 10.
¶ *Marginal note.*—No. 13.

I do not think that our Stamp Act would have been such a Law, as His Majesty's Ministers would have desired to place upon the Tables of Parliament.*

1827.
1 June.

I hope if any expressions have escaped my Pen in writing this hurried letter, which Your Excellency may deem in the slightest degree improper, that Your Excellency will attribute it to any cause rather than a wish to offend. I have had an overwhelming duty to perform. I am sure your Excellency has had a painful one.

Apologies for
possible errors

With every sentiment of high respect,

I have, &c.,

FRANCIS FORBES, Ch. Justice, N.S.W.

[Enclosure No. 3.]

REMARKS ON Chief Justice Forbes's letter of the 31st May, 1827.

Remarks by
governor on
letter of
F. Forbes.

1st. The sum of Four Pence was stated in the Margin immediately opposite the Blank left for the Stamp Duty, when the Bill *first received the Chief Justice's Certificate*, and was very generally spoken of? Here he admits he saw the Act, in the Sydney Gazette. It was published I think on the 3rd or 4th of May. He then of course read it, and became acquainted with all its provisions. Why did he not then come forward instead of allowing it to lay over for more than 3 weeks, before he communicated his doubts to the Governor?

2nd. The ceremony was dispensed with, because it was understood the Chief Justice had in point of fact agreed to what was proposed, though he had not actually signed the Bill. But why did he not enquire *at the time* the reason of the ceremony being dispensed with?

3rd. See the preceding Remarks.

4th. It does not happen to be the province of the Chief Justice to determine the amount of the Duty, or the immediate necessity of imposing it. The 29th Section of the New South Wales Act points out his duty in this respect. The doctrine held by the Chief Justice is to the effect that in this case his affording his certificate or not is to be determined by the amount of the Duty; according to which, *He* is to be the judge of the necessity of passing a Money Bill, as well as whether it is repugnant to the Laws of England! I asked the Chief Justice in Council yesterday whether he could, consistently with the New South Wales Act, refuse certifying a Bill because it imposed a Duty a little higher than he thought was absolutely necessary? He said he "could not answer general propositions."

5th. He ought then to have stated his objections, *as soon* as he read the Bill in the Sydney Gazette. But he allowed three weeks

1827.
1 June.

Remarks by
governor on
letter of
F. Forbes.

to elapse. It would only be fair to suppose the irregularity did not occur to him, until it was noticed by the "Australian." But even then he remained silent.

6th. At Paragraph No. 3, he says, "I had, of course, supposed the Bill would be regularly laid before me for my certificate before it could be passed, and then would be the time for me to read it with care."

It must be presumed, from what he states in this and a former letter, that he did read it carefully, when he saw it in the Gazette, if not before, though he would seem now not to be aware that it is stated in the Body of the Bill, according to the New South Wales Act, that the surplus is to be applied to defraying the expences of the Colonial Police, which amounts to £19,000 a year. But, even in calculating the expences of Printing, he has omitted the Printing Forms, etc., for the Public Establishments, which is very expensive.

7th. Why is this to be assumed as a fact? that the "Publishers of Newspapers would be deprived of their Trade"? The profits of the Sydney Gazette, which are stated by the Editor at £3,000 Sterling a year, might be reduced in some degree; but he would still have ample employment. Taxes do not fall upon the Dealers, but upon the Consumers generally speaking.

8th. The Tax in question is by no means inconsistent with the principle laid down by Mr. Justice Blackstone.

9th. The purposes, for which this Tax is imposed, is "distinctly and particularly stated in the body of the Law imposing such Tax, and is for *Local* purposes," as required by the New South Wales Act.

10th. This conclusion is not correct; it would not ruin the Editors, whom it professes merely to Tax. The Editor of the Sydney Gazette for example clears £3,000 Sterlg. a year by his Paper, as has been already stated, independent of the work he does (and it is very considerable) for the several departments of Government.

11th. Six members out of seven recommended the Duty being fixed at Four pence; and I, as Governor, approved of it; and I know that the Council agree with me in thinking it is not the province of the Chief Justice to determine the amount of a Tax, or to say that a Tax of twopence for example is not repugnant to the Laws of England, but that the addition of one farthing or a Half penny would render it so.

12th. That I was desirous of receiving the advice of the Council is evident from the circumstance of my having adopted the recommendation of the Council as to the amount of the Tax. The Chief Justice had certified that a Tax on Newspapers was

not repugnant to the Laws of England; and, had he attended in his place as a Member of Council, it would have been open to him to have stated his opinion as to the amount of the Tax. But it never could have been intended to give the Chief Justice the power, after certifying a Bill as being consistent with the Laws of England, to prevent its being carried into effect, though passed by the Governor in Council. He has declared the original Bill, tho' certified by him, before it was submitted to the Council, to be a "Nullity" and has refused to certify it. See copy of his letter* of the 30th of May inst., enclosed with my Despatch of that date, marked "Separate."

1827.
1 June.
Remarks by
governor on
letter of
F. Forbes.

13th. The Council had not expressed any desire to have an opportunity of re-considering the subject; and, as far as they are concerned, they look on the Chief Justice only as a Member of their Body. The duty of the Chief Justice is pointed out in the 29th Section of the New South Wales Act, which does not invest him with any supereminent powers as a member of the Legislative Council.

14th. I have stated and have no doubt of the fact that, from the instance given of one Editor clearing £3,000 a year by his Paper, three others being published and in circulation, that they can well afford to pay a Tax of 4d., as in England, when the price of their Papers are generally a shilling, and that of the Monitor 1s. 6d. Neither will the legitimacy of the application of the proceeds of the Tax be doubted, when it is known that the Licentiousness of the Press has occasioned the increase of the Police Establishment, which is little short of £19,000 Sterlg. a year, exclusive of the Expence of the Government Printing.

R.D.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 73, per barque Faith.)

My Lord,

Government House, 4th June, 1827.

4 June.

I have the honor to acquaint your Lordship, in reference to my Dispatch No. 75 of last year, that it became impracticable to bring the Inquiry,† alluded to in the above Dispatch, to a conclusion until lately, though every exertion was used on the part of the Law Officers of the Crown to accomplish that object.

Inquiry re
shooting of
native by
mounted police.

Soon after I had the honor of addressing your Lordship, I directed the Acting Attorney General to proceed to Hunter's River for the purpose of investigating the matter on the spot, conceiving that his Official Character would give effect to the object of the local Government. His Mission, however, proved ineffectual, as will be seen by the inclosed copy of a Report,

Investigation
by W. H.
Moore.

* Note 91. † Note 92.

1827.
4 June.

Trial of
N. Lowe.

which he addressed to me on his return to Sydney. Mr. Moore having at length obtained information of a person, who was understood to have witnessed the proceeding in question, the matter was again brought under the consideration of the Executive Council, and orders were given for the Trial* of Lieutenant Lowe, who it will be seen by the Report contained in the Sydney Gazette herewith enclosed, which is understood to be correct, was acquitted of the charge.

I beg leave to transmit a copy of the Report, which I have addressed to the Commander in Chief by this opportunity, detailing the proceedings as they took place.

I regret that the result has not been more satisfactory, but I am not aware that any thing further could be done in the case.

I have, &c.,

RA. DARLING.

Removal of
C. Close from
magistracy.

P.S.—I ought not to have closed my letter without informing your Lordship that Mr. Close, whose conduct is alluded to in the Acting Attorney General's Report, has been removed from the Magistracy.

R.D.

[Enclosure No. 1.]

[A] ACTING ATTORNEY-GENERAL MOORE TO COLONIAL SECRETARY
MACLEAY.

Sir, George Street, Sydney, 22nd January, 1827.

Report of
inquiry re
shooting of
native by
mounted police.

Agreeably to His Excellency the Governor's directions, I proceeded from hence to Newcastle for the purpose of enquiring into the report of an aboriginal native Blackman having been tied to a tree and shot at Wallis' Plains by some of the Mounted Police.

On my arrival in Newcastle, I made every enquiry as to the names of the Persons, who were likely to afford me any information on the subject; and, with the exception of a man of the name of Salisbury, who I learnt was in Sydney, and respecting whom I immediately wrote to you, I was only able to ascertain the names of three men, whom I understood to be capable of throwing any light upon the matter, though I was informed that three others, who had previously undergone examination, could also give material information respecting it.

I lost no time in writing to Mr. Close to procure the attendance of the persons, I thought necessary, and to request that he would summons any others that he might think proper to have examined; a copy of which letter I now transmit.

I accordingly proceeded to the house of Mr. Close, one of the Magistrates at Wallis Plains, whom His Excellency had directed to join in that Inquiry, and was not a little mortified to find that

* Note 80.

I, who was an entire stranger in the neighbourhood, was obliged to give up all hopes of having any assistance rendered to me by a person, who, from his local knowledge of the place, was so capable of giving it, and which, however unpleasant it might be, I conceived it was his duty to do without hesitation.

1827.
4 June.

Report of
inquiry re
shooting of
native by
mounted police.

Mr. Close seemed to consider the purposes of my Mission more in the light of an investigation into the conduct of himself and the other Magistrates, who had previously taken the examinations, than the enquiry into the alleged shooting of the Blackman, stating that he was charged by His Excellency with corruption and improper conduct as a Magistrate. I had to reason with him that I knew of no such charge against him or any other Magistrate; that I should confine my Inquiry to the objects, I was directed to investigate; and that, unless he joined me in it, I was incapable myself of proceeding for want of magisterial authority. It appeared to me that it was solely on this consideration that he consented to attend the investigation and administer the necessary oaths, for, as to the facts into which I was directed to enquire, I invariably obtained from him no other answer than that he had done all he could on the former occasion, and that he could not now do more.

On proceeding to the Government Station the next morning for the purpose of examining the witnesses, whose names I had forwarded to him, after waiting some hours for the arrival of Mr. Webber, without whose attendance Mr. Close seemed very unwilling to commence business, but who, I understood, was prevented coming by the highness of the river, we at length entered upon the proceedings, which commenced with a repetition from Mr. Close of his former statements of objections to it; and the manner, in which he thought proper to head the depositions* taken that day, will shew His Excellency with what temper that Gentleman entered upon the duties of his Office on the occasion.

He persisted, contrary to my opinion and advice, to call witnesses to prove, as he stated, that he had done everything on the former Inquiry that he could have done to elucidate the matter, but which, after it was gone though as far as he chose to proceed in that course, in my judgment only went to shew that he had examined all the Witnesses, who had voluntarily come forward to give evidence, and that he had not endeavoured to suppress any of their testimony.

After he had concluded his examination of Mr. Reid, who was the first witness he called, I did not think it necessary to put any questions to him, as I understood him to have been at a distant part of the Country, when the transaction was said to

1827.
4 June.

Report of
inquiry re .
shooting of
native by
mounted police.

have taken place; and he was not in the habit of such communication with any of the parties there, as I conceived would enable him to say anything material on the subject; but, after he had finished Mr. Robertson's Examination, I said I conceived it necessary to put some questions to him, and, amongst others, I asked him whether he had ever had any conversation with Mr. Lowe respecting the alleged shooting of the Black Man. This question Mr. Robertson declined answering. I remonstrated and told him it was a question that, in any Court of Justice, he would be bound to give an answer to; he still refused; and I then appealed to the Magistrate, Mr. Close, whether he was not bound to answer it, when that Gentleman decided that, in his opinion, he was not obliged to answer it.

Mr. Close did not think proper to call any other witnesses, but intimated to me that I could call any witnesses, I might consider necessary. I accordingly proceeded to examine the witnesses, whose names I had previously forwarded to be summoned, and whose examinations are attached to the proceedings of that day. I then enquired of Mr. Close, whether he had caused any other persons to be summoned for examination according to the request, contained in my letter to him, and was informed that he knew of no one, who could give any further information.

Having no further witnesses in attendance that could be examined that day, I stated to Mr. Lowe that I could not under the circumstances call upon him to give evidence on Oath, but that, if he had anything to state voluntarily to the Magistrate, his statement would be heard and a minute made of it on the proceedings. He handed to me the Letter of Instructions he received on taking the command of the Military at that Station, which I did not think it necessary to take a copy of, and stated that he should decline saying anything in this stage of the proceedings.

Seeing that, by this mode of Enquiry, I was not likely to get any satisfactory account as to whether or not any circumstance of the Nature alluded to had taken place, I resolved on not pursuing it, until I could get better information as to the persons, who were on the spot at the time it is said to have occurred. I happened to meet with a man, who a short time before had been a constable in Sydney, and in whom I thought I could place some confidence. He knew nothing but a current report of the transaction; but told me he thought he could obtain some information for me, which I directed him to do and to meet me the following day at Mr. Bloomfield's. I was surprized to find that, although this man lived amongst a number of small Settlers within a mile of the Government Station at Wallis Plains, He had not heard of any Enquiry going on into this matter, until I

told him of it. I waited all the next day, but he never came. The following morning, he came and told me that a man of the name of Francis Taylor told him he knew something about it, and that Newton knew much more, as he saw the transaction take place; but that there was a general fear in the neighbourhood of any one acknowledging what he knew, and therefore he could not without some delay get any further intelligence. I immediately went over to where Taylor resided, and afterwards waited some time in the neighbourhood to see him, but I could not meet with him and Newton. The other man was said to have left that part of the country, and I could not understand whither he had proceeded.

1827.
4 June.

Report of
inquiry re
shooting of
native by
mounted police.

I then determined on returning to Newcastle, where I thought I was more likely to gain Information in the way. I first adopted, by inquiries, as I conceived my remaining at Wallis Plains would only tend to increase the unwillingness, I saw, as well among the lower class of persons, as the higher, to afford me any intelligence; At the same time leaving Instructions with the person I have mentioned to forward me any Information, he might be able to collect. On my returning back to the Government Station, just as I was starting for Newcastle, a person put a letter into my hand from Mr. Close, dated 14 January, a copy of which I herewith transmit to you, together with the answer I returned on my arrival at Newcastle.

I waited at Newcastle until the third day without hearing from the quarter I expected, and not finding I was able to do anything further then than I had previously done, I returned to Sydney, intending to suggest what further line of proceedings I would recommend to be taken.

There is a mystery about this matter, which wants clearing up; and I told Mr. Close that, as long as no satisfactory account could be obtained either one way or the other, he must expect the enquiry to continue and be renewed from time to time; and that it was his duty as a Magistrate, as well as mine from my official position, to pursue it. The report is in everyone's knowledge; but so great a time is now elapsed, since the circumstance is said to have happened, that there is a difficulty in tracing it to any legitimate source; and, from the frequent and constant changes that take place in the lower orders of the population of a distinct and newly formed Settlement, which that is, I was much embarrassed to find any persons, whom I could ascertain to be residing at Wallis Plains, when it is said to have taken place

With respect to the depositions that have been taken, I can only remark that Thomas Boardman's differs very materially from the statements he previously made to me. He stated to me

1827.
4 June.

Report of
inquiry *re*
shooting of
native by
mounted police.

that, when he saw the man taken up towards the Government House at Wallis Plains, John Hicks, an Overseer to Mr. Smith, also saw him; and Hicks remarked to him that the men were going to shoot the Black, and said that Serjeant Moore had told him so, but he did not believe it, and said to that effect in answer to Hicks' observation. Now, at the time he was examined on oath, he pretended he had no recollection as to any one having said so, and Hicks, on his examination, denied that he has ever heard Moore say anything of the kind, though he heard some persons in the yard say the Black was going to be shot, but could not tell who they were, except that he believed some observation did pass between Boardman and him on the subject; and he thought the observation had come from Boardman.

On my arrival in Sydney, I went to see Salisbury, who, in consequence of my Information, had been called upon to make a deposition as to what he knew. This man's deposition agrees with the account, I heard he had been telling in Newcastle, and it also agrees with the information I had of Thomas Newton's having been present at or immediately after the transaction, and of his having assisted in burying him.

Salisbury, I have lately learned, has been convicted of perjury; and, by the evidence of Eckford, the Chief Constable, taken by Mr. Close after I had left the Police Office at Wallis Plains, it appears that, at the time of the first enquiry by the Magistrates, Salisbury, on being questioned by the Chief Constable, stated he knew nothing of it. These circumstances greatly discredit his statement; and, if he has been convicted of the Perjury, he is rendered incapable of giving any testimony whatever. Nevertheless, I think it is absolutely necessary to take the Examinations of Thomas Newton and Francis Taylor. I should also recommend that a man of the name of Constantine and Mrs. Bartley, the wife of a soldier, who are stated by Salisbury to have seen the Blackman after he was shot, be also examined. Thomas Farnham, who was lately a constable on the banks of the River, and who delivered the Blackman over to the Mounted Police, I am told knows much more than he chose to say at the time he was examined on the first occasion. This man is stated to have left that part of the country; and I was not able to ascertain where he was, when I was at Wallis Plains.

With respect to the mode of taking the examinations of these Persons, a favourable opportunity may be considered as to be afforded by the approaching Quarter Sessions to be holden at Newcastle, when the Magistrates, who hold the Sessions, can send for the Parties to attend them in Newcastle, to take their depositions, not as Justices sitting in Sessions, but as a part of

their Magisterial duties. I do not conceive there is any necessity for ordering Mr. Lowe to attend, until it is ascertained whether any evidence is likely to be elicited; and should anything appear likely to affect any party, as implicated in such a transaction, the necessary formulæ can afterwards be gone into. Should His Excellency not approve of this method of proceeding, I think no other satisfactory course can be pursued than that of bringing the parties for examination to Sydney.

1827.
4 June.

Report of
inquiry re
shooting of
native by
mounted police.

I expect, on the next return of the *Liverpool* Cutter from Newcastle, to hear the result of some further enquiries I have directed to be made, which I will communicate, as soon as I receive, for the purpose of being laid before His Excellency.

I have, &c.,

W. H. MOORE.

[B] ACTING ATTORNEY-GENERAL MOORE TO COLONIAL SECRETARY
MACLEAY.

Sir, George Street, Sydney, 27th January, 1827.

On further considering the ease of the Black Native, said to have been shot at Wallis Plains, I do not conceive it would be proper at present to obtain a Warrant against any of the parties, mentioned in the deposition of William Salisbury. I have written to the Magistrates to forward me the depositions, on which he was convicted of perjury, but cannot, until I obtain them, give any opinion as to the propriety of his conviction. At any rate, the conviction stands against him, and his deposition, therefore, cannot be taken as sufficient evidence by any legal authority to ground any subsequent proceedings.

Procedure
proposed by
W. H. Moore.

I think the depositions of the persons, I named in my last communication, or at any rate those of Thomas Newton, Constantine and Mrs. Bartley, should be first taken; and should they disclose any such or similar circumstances, as those deposed to by Salisbury, warrants should then immediately issue against all the parties supposed to have acted in the transaction.

The more advisable mode of proceeding probably would be to send for the three persons, I have named, in order that their depositions may be taken in Sydney, prior to the proceeding of the Chairman of the Quarter Sessions to Newcastle, by whom any warrants, that may be necessary to be procured against any parties there, can then be forwarded, and who could take any further depositions that might be considered necessary when there.

I have as yet had no further intelligence from Hunter's River respecting this matter.

I have, &c.,

W. H. MOORE.

1827.
4 June.

[Sub-enclosure No. 1.]

ACTING ATTORNEY-GENERAL MOORE TO COLONIAL SECRETARY
MACLEAY.

Sir,

Newcastle, 8th January, 1827.

Alleged witness
of shooting of
native by
police.

With respect to the Enquiry into the alleged shooting of a Native Black at Wallis Plains by the Mounted Police, on which it was His Excellency the Governor's wish that I should proceed to this place, I have as yet been able to ascertain the name of one person only, who is stated to have been present and to have seen the transaction; whether truly or falsely, I cannot say, but a man of the name of Jeremiah Buffy, now residing in this Town, and whose statement I have taken, informs me that a man of the name of Salisbury told him that he saw the circumstance take place. Salisbury, I have ascertained, had been very lately sent up to Sydney for the purpose of being forwarded to one of the Penal Settlements under a sentence of the General Sessions here for having stolen the Stock of a Government musquet. He is most probably (as the circumstance has happened within a few days only) now in the Sydney Gaol; and, should you be of opinion that what he says is material, I would recommend that he be taken before a Magistrate to make his deposition; and, should that measure be necessary, he must be detained in Sydney, until further knowledge of the affair is acquired.

I have scarcely time to inform you of this circumstance by the return of the Liverpool Cutter, but have thought it necessary to do so as early as possible, in order that the man alluded to may not be sent away previously to your ascertaining how far his knowledge may extend.

I have, &c.,

W. H. MOORE.

[Sub-enclosure No. 2.]

ACTING ATTORNEY-GENERAL MOORE TO MR. E. C. CLOSE.

Sir,

Newcastle, 9th January, 1827.

Inquiry to
be held.

I purpose being at Wallis Plains, as early on Thursday next as wind and tide will permit, for the purpose of assisting in the enquiry His Excellency the Governor has been pleased to direct you, in conjunction with Captain Allman, Commandant, and some of the other Magistrates, whose names I am not at present acquainted with, to make into the Truth of an alleged shooting of a Native Black at that place by some of the Mounted Police.

As my detention from Sydney just previous to the Criminal Sessions of the Supreme Court, which commences with the ensuing month, will be attended with very serious inconvenience,

I have to request you will cause such witnesses, in addition to the names I now send you, to be summoned to be in attendance at such place, as may be most convenient to you on Friday morning next, to be examined on the subject of this Inquiry.

1827.
4 June.

The names of the persons, whose Examinations are considered to be absolutely necessary, are as follows, vizt. Witnesses to be examined.

John Duncan, Prisoner of the Crown; John Eekford, District Constable; Thomas Farnham, Ordinary Do.; — Jones, lately in charge of the Horses; — Hicks, Overseer to Mr. Smith; and Thomas Boardman, of Wallis Plains; the three former of whom have already made depositions in this matter, but whose statements are not at all satisfactory.

As Captain Allman's remaining in Newcastle can scarcely be dispensed with during the change, that is now taking place in the Military Detachments, I see no absolute necessity for his attendance. I hope you will intimate to some of the other Magistrates, who are requested to join in this Inquiry (whose names I presume you have been made acquainted with), to meet you. I have reason to believe that Mr. Webber is one of them; but, as I find I am not furnished with a copy of the Governor's communication to the Magistrates, whom he wished to investigate this matter, I cannot give you any further information on this head. Magistrates to be summoned.

I take the present opportunity of also mentioning to you the cases of six men, who are now in the Gaol at this place, Duffy and others, who were committed by you as principals and accessories in a burglary on the premises of Messrs. Scott. If you have not already forwarded the depositions in these cases to Sydney, I wish you either to forward them to me, before I leave this part of the colony, or to furnish me with them, whilst I am at Wallis Plains. Depositions in case of burglary.

I have, &c.,

W. H. MOORE.

[Sub-enclosure No. 3.]

DEPOSITIONS AT MAGISTERIAL INQUIRY.

Wallis Plains To Wit.

IN consequence of a letter received from the Colonial Office, dated 21st December, 1826, imputing corruption or neglect to the Magistrates,* who examined into a case, they were required to investigate, contained in the words, "As you do not appear to have availed yourselves of the means in your power (particularly in not having examined Lieutenant Lowe, who was ordered to attend for that purpose) to investigate the matter, referred to you in your Magisterial capacity," and directing "the Acting Attorney General, in consequence, to proceed to Hunter's River for the purpose of making the necessary enquiry into the case" and that Officer having

Depositions at inquiry re shooting of native by mounted police.

* Note 94.

1827.

4 June.

Depositions
at inquiry re
shooting of
native by
mounted police.

declared he could not conduct the examination, inasmuch as he could not administer an oath, but could only suggest questions to the Bench. The investigation proceeded as follows:—

The Court proceeded to call

Wallis Plains to wit:—

JAMES REID ESQUIRE. This Deponent, being sworn, deposeth that he was present at Wallis Plains Court House, when Mr. Close, Captain Allman and Mr. Webber made enquiry into alleged shooting of a Black at Wallis Plains.

There was nothing, that the Witness was aware of, omitted on the part of the Magistrates, which, if brought forward, would have thrown light on the circumstance. He saw no person outside the Court, who, if he had been called on, could give any evidence. He did not see anyone prevented from giving his deposition; considers the Magistrates availed themselves of all the means in their power. He thinks the Magistrates did their duty. It did not appear that anything further could have been done than was done, when the examination took place. Does not think that the Magistrates wanted any jogging from any law authority (had he been here) in the execution of their Office. He had been in this part of the country three years and a half, during which he has always found Mr. Close ready to do his duty.

There were no omissions purposely made to bring off the accused parties, further than restraining them from committing themselves.

J. REID.

Sworn before me, this 12th January, 1827:—E. C. CLOSE, J.P.

Wallis Plains to wit.

ENSIGN ARCHIBALD ROBERTSON, 57th Regiment, being sworn, Deposeth:—

That he was at Wallis Plains, when the examination took place. Witness had received previously the names of several Soldiers, for whom he had to send, in order that they might be examined. Witness was outside the greater part of the time. There was no impression outside that the Magistrates were not doing their duty. Thinks the Magistrates availed themselves of all the means in their power. Saw no one outside the Court who, if he had been called upon, could have given evidence on the subject. States that he came here on the 28th of August. Some of the Soldiers detained were Serjeant Moore and Corporal Budge.

To a question put by the Acting Attorney General, Whether he had any conversation with Lieutenant Lowe respecting the shooting of a Black, Witness refused to answer the question. Witness has heard of a Black, who was implicated in the murder of Dr. Bowman's Shepherd, was shot. Witness corrects this by saying he does not know whose servant it was that was murdered. Witness heard this took place a short time before his arrival. Witness does not know whether that was the Black, that was the subject of investigation. Witness first heard of the circumstance between June and July. Witness never heard any one say that he was present at the time the Black was shot.

A. ROBERTSON.

Sworn before me, this 12th of January, 1827:—E. C. CLOSE, J.P.

Wallis Plains To Wit.

JOHN ECKFORD, District Constable, maketh Oath and sayeth: He was directed by the Magistrates to assemble all the witnesses he

could, respecting the alleged shooting of a Black by the Mounted Police. He did so. Witness mentioned every thing he knew about the matter at that time. Farnham, an ordinary Constable, brought a Black to Wallis Plains from up the Country. He did not recollect from whence the Black was brought. Thinks it was the talk that the Black had been in the murder of Dr. Bowman's man. Witness saw a Black in the Barracks, whom Farnham, he thought, brought; does not know his name; does not know what became of him; he was brought to the Barracks the latter part of the day. Witness saw him next day. Witness went past the Barracks in the morning, and returned in the evening. He never saw the Black after the morning. There were two soldiers at the time at the Barracks, but he does not know their names. He does not know for what purpose the Black was brought down. He heard no more about him, or what became of him after. Witness did not see the Coroner here on the occasion. When he went up the Banks after seeing the Black, he was as far as Hunt's, better than a mile. Witness recollects three or four Blacks at different times being in the Barracks. There was a single one at some other time; thinks all other Blacks, who had been there, had been sent to Newcastle. One had gone down in Mr. Close's boat. Does not know the names of any soldiers, who were here at the time.

1827.
4 June.

Depositions
at inquiry re
shooting of
native by
mounted police.

JOHN ECKFORD.

Sworn before me, this 12th January, 1827:—E. C. CLOSE, J.P.

Wallis Plains to wit.

THOMAS BOARDMAN. This Deponent maketh Oath and sayeth: he came here in 1818. He was here in June or July last. He recollects two Blacks being brought to Wallis Plains, but they came down separately. One was accused of spearing Dr. Bowman's carter. Does not know his name. He was brought by some constables from Patrick's Plains. Witness saw him next morning at the Court. Recollects seeing another Black, said to be brought by Farnham down, about a week or so after. It was said he had been guilty of murdering one of Dr. Bowman's men. This happened seven or eight months ago. Witness saw him pass his house, accompanied by two of the Military. He saw no constable with him. The Black was coming towards Government House. He does not know the name of the soldiers. It was about 8 o'clock, when he saw him going by. Witness saw the Black ascend the Hill towards the House, but did not see him come in. Witness never saw him after that. He should not know him if he did. He heard a report that he was shot, but knows no further. There were no other Blacks in custody at the time, so far as Witness knows. Heard reports of 3 or 4 Musquets, the morning he saw the Black; but this was a usual occurrence; can't say from what direction the reports proceeded; the echo is very deceitful. Witness heard that some time ago there was an enquiry directed relative to the shooting of a Black. He was at home, when that enquiry was going on; was not warned to come and give information on that occasion. Witness did not consider it his duty to interfere with the Military. Witness did not consider it his duty to acquaint the Magistrates, as he thought he had no authority.

THOMAS BOARDMAN.

Sworn before me, this 12th January, 1827:—E. C. CLOSE, J.P.

1827.
4 June.
Depositions
at inquiry re
shooting of
native by
mounted police.

Wallis Plains to wit.

JOHN HICKS, Overseer to Mr. Smith. This Deponent maketh Oath and sayeth:—

He resided at Mr. Smith's previous to June and July last. Does not know Farnham. Does not know of any Black that was here on account of the murder of Dr. Bowman's servant. Does not recollect any Black being in custody, except one whom he saw pass through Mr. Smith's yard in charge of two of the Military; it was in the morning about seven or eight months ago. Does not know, who the soldiers were. He heard he had been killing some white people, one or two. He never saw the Black after. Witness saw him on the road afterwards, that is, in the Paddock. He can't say whether he ascended the Hill; thinks he had a cord about his body. Does not know where he went to. Heard a report that he had been shot. Some Blacks were out shooting Ducks at the time. He had himself one so employed. He saw Boardman that morning, a little after he went by. Can't say what the Black was going to be done with. Witness heard the Black was going to be shot by the people in the yard. Thinks an observation passed between Witness and Boardman that they were taking the Black into the Bush to shoot him. He did not see the two soldiers come back afterwards. Can't say who he heard conjecture that he was going to be shot. He never saw his body after. Thinks, if he had seen the Black again, he should have recollected him. Does not know their name. Does not know if any enquiry was instituted before the Magistrates lately. Does not consider that such a thing as the shooting of the Black had been done.

JOHN HICKS.

Sworn before me, this 12th January, 1827:—E. C. CLOSE, J.P.

Wallis Plains to wit.

WILLIAM JONES, Mangles, Life. This Deponent maketh oath and sayeth:—

He is attached to the Mounted Police. He recollects a Black being brought here once, and two afterwards. These all went to Newcastle. Soldiers went with two of them by land, and one went in a boat. Recollects no other Black being here. He only recollects three Blacks; does not know what they came for, or what they had done. Does not recollect any Black, said to be implicated in the murder of Dr. Bowman's Shepherd, or any other Black but the three above mentioned. His duty leads him away sometimes two or three days together. Never heard of a Black being shot here by the Mounted Police. He never saw one himself, or had any reason to believe anything of the kind happened. Never heard any one say that he was present, when such a thing took place. Does not know Farnham, or even the name. There is no constable of that name near here that he knows of.

his
WILLIAM X JONES.
mark

Sworn before me, this 12th January, 1827:—E. C. CLOSE, J.P.

Wallis Plains to wit.

JOHN DUNCAN, Overseer to the Government Gang, maketh Oath and Sayeth:—

Recollects the Blacks being brought here at different times. Two were confined in the Lock up, and the other in the Kitchen. These all went to Newcastle. He never saw any single Black in custody

except the one sent to Newcastle. He had heard reports that a Black was shot. He had never heard any one say that he had been present, when such a circumstance took place. *Witness told all he knew, when he was before examined.*

1827.
4 June.

JOHN DUNCAN.

Sworn before me, this 12th January, 1827:—E. C. CLOSE, J.P.

Farnham has left this part of the Country, since he was dismissed.

[Sub-enclosure No. 4.]

MR. E. C. CLOSE TO ACTING ATTORNEY-GENERAL MOORE.

Dear Sir,

14th January, 1827.

I received information yesterday, which I conceived would be of importance, and, in consequence of which, I went over to Wallis Plains and took the deposition of the man concerned, and, on my return home, two more on the subject; all which went to prove nothing. I have given the line of enquiry, you commenced with Mr. Robertson on Friday, every attention, and find on reference to my books that your question ought to have been answered according to *Law*. I still, however, imagine that the answer would affect Mr. Robertson *personally*, both as to honor and as compromising a Felony, that he may have been told had been committed. If, however, you consider you are justified in pursuing the question in the manner, you seemed to project, I wish you would let me know when you will find it convenient to be at the Government Cottage, and I will meet you there.

Inquiries made
by E. C. Close.

Examination of
A. Robertson.

I am, &c.,

E. C. CLOSE, J.P.

[Sub-enclosure No. 5.]

ACTING ATTORNEY-GENERAL MOORE TO MR. E. C. CLOSE.

Sir,

Newcastle, 15th January, 1827.

I received your letter yesterday afternoon, just as I was in the Act of starting from Wallis Plains for this place. As I find it impossible to proceed in the Enquiry the way, we were then pursuing, with any hope of a satisfactory result as to coming at the truth from a want of knowledge on my part of any of the parties, who were at all likely to give information, and from the general unwillingness, that seems to prevail, as to any persons coming forward, or feeling inclined when brought forward, to afford it, I had previously resolved on a different method of procedure for the present, and which I find it would be impossible for me to remain here to conclude on account of the approaching Criminal Sessions of the Supreme Court, at which my attendance will be indispensable.

Futility of
present method
of inquiry.

I was not, from your letter, led to expect a different adjudication as to the mode of enquiry, I had commenced, than you had already given (though perhaps for a different reason); the

1827.
4 June.

Further
depositions
to be taken.

Difficulties
experienced by
W. H. Moore.

gentleman, whom you had yourself called for examination as to matters entirely disconnected and immaterial to the subject of enquiry, could have acquired his knowledge only from hearsay, and my question to him was directed to the only species of hearsay evidence that could be admissible.

As I have no doubt further depositions must be taken, when I have ascertained the names of the persons, who are likely to know or must know whether or not such a transaction as the one, now inquiring into, ever did take place. I must leave all further investigation until that period. I came here totally unacquainted with the names of any parties, who were on the spot at the time the circumstance is alleged to have taken place. I forwarded to you the names of three persons, whom I understood were there and could give some information, and who were examined; but I wanted the assistance of some one, who, from local knowledge of the neighbourhood, could better acquire that information than I could in the space of a few days, which is all the time I could give to the subject.

I shall return to Sydney by the *Liverpool* Cutter, which will sail about mid day to-morrow. If you have no opportunity of forwarding the depositions to me here prior to that time, I will thank you to forward them to me at Sydney.

I am, &c.,

W. H. MOORE.

[Sub-enclosure No. 6.]

ACTING ATTORNEY-GENERAL MOORE TO COLONIAL SECRETARY
MACLEAY.

Sir,

Newcastle, 15th January, 1827.

Investigations
by
W. H. Moore.

As yet my enquiry into the truth of the report of the Native Blackman having been shot by the Mounted Police at Wallis Plains has not been attended with any satisfactory result.

I wrote to you from this place a week ago respecting a man of the name of Salisbury, who is stated to have said he was present, when the circumstance took place; his deposition, I presume, you have already caused to be taken.

It has been since reported to me that a man of the name of David Miffen or Buffin, who is also very lately gone to Sydney, and who was, about the time alluded to, an overseer of one of the Government Gangs at Wallis Plains, ordered two of the men under him to go and bury the Body of the Black Man, who is stated to have been shot. The Gang has been since broken up, and I am not able to ascertain the names of any of the men who were in it.

I was greatly in hopes I should have heard the result of Salisbury's examination, before I left this place, because it would

most probably have led me to the names of other persons, who could have given some information respecting it, as I have been totally unable to trace the report to anything like legal evidence of the Commission of the Act, stated to have taken place.

I shall reserve all observation on the subject, until I make my report to the Governor on my arrival in Sydney, which I purpose doing by the next Vessel, that leaves this place, as the Criminal Sittings of the Supreme Court commences the beginning of the next month, and it will be impossible for me to prepare the necessary informations and subpœna the witnesses for the trial of the Prisoners in Gaol, if I continue longer at this place.

I have, &c.,

W. H. MOORE.

[Enclosure No. 2.]

[*This was a copy of the issue of the "Sydney Gazette" dated 21st May, 1827.*]

[Enclosure No. 3.]

[*This was a copy of Governor Darling's despatch to Sir H Taylor, dated 22nd May, 1827; see page 317.*]

GOVERNOR DARLING TO EARL BATHURST.

(Despatch marked "Separate." per barque Faith.)

My Lord,

Government House, 8th June, 1827.

8 June.

Having adverted in my Dispatch, marked "Separate," dated the 24th Ultimo, to the correspondence, which had passed between Chief Justice Forbes and myself on the subject of the representation,† made by Archdeacon Scott against Mr. Justice Stephen, I now do myself the honor of transmitting for your Lordship's information a copy of the correspondence alluded to, Mr. Stephen having, as I understand, transmitted his reply to the Archdeacon's statement direct to your Lordship, and not being aware of the use that may have been made of this correspondence, or how the subject of it, which related to an occurrence early in the year 1826, could apply to Mr. Scott's complaint of Mr. Justice Stephen's Proceedings, at a Trial which took place fifteen months after.

Correspondence
with F. Forbes
transmitted.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

Sir,

Sydney, 24th April, 1827.

The substance of a communication made to me by Your Excellency sometime in the month of January, 1826, in reference to a case then pending in the Supreme Court, having been deemed necessary by Mr. Justice Stephen to explain certain

* Note 80. † Note 96.

1827.
8 June.

Resumé of
communications
re appointment
of King's
visitor.

grounds of a complaint, made against him by the Archdeacon, I beg leave to recal the circumstances of that communication to Your Excellency's recollection, and at Mr. Stephen's desire to request that your Excellency will say how far my apprehension of them is correct.

The Supreme Court had been moved for a prohibition to restrain the honorable Archdeacon from proceeding in a certain case, in which he had exercised jurisdiction as the King's Visitor; and it became a material point to ascertain whether any Letters Patent had been issued by the Crown investing the Archdeacon with the authority he had assumed. Extracts from Official Instructions and despatches received by your Excellency's predecessor were in evidence before the Court, from which it might be inferred that Letters Patent had passed the Great Seal, but from some cause had been delayed in the transmission. To clear up this fact, I waited upon your Excellency and requested to be informed, if your Excellency had brought out any such Letters Patent, or were in possession of any information upon the subject. This was very shortly after your Excellency's arrival in this Colony. Your Excellency at first could not bring any circumstance to recollection, but afterwards remembered that you had some Instructions, which were intended to have been transmitted to Sir Thomas Brisbane, but were brought out in duplicate for the first time by your Excellency.* These Instructions were from Earl Bathurst, directing that, as soon as they were received, Letters Patent should issue under the Great Seal of the Colony according to the form transmitted at the time. I immediately suggested the propriety of causing them to be issued as early as possible; and I think your Excellency's reply was that you had shown them to the Attorney General with that view, and that he had requested they should be postponed for a short time, as there was a proceeding in the Supreme Court, which would render their publication premature, or words to that effect. I have the honor, therefore, to request to be informed whether Your Excellency's recollection of the above circumstances concurs with mine. I have, &c.,

FRANCIS FORBES.

[Enclosure No. 2.]

GOVERNOR DARLING TO CHIEF JUSTICE FORBES.

Sir,

Government House, 27th April, 1827.

I have the honor to acknowledge the receipt of your letter of the 24th Instant, requesting to be informed, with reference to a representation made by Archdeacon Scott of the conduct of Judge Stephen on a trial, which took place last month in the Supreme Court, whether I did not recollect having informed

* Note 97.

you, in the month of January last year, that the Attorney General had requested that the publication of the Letters Patent, which I had brought out with me from England, appointing the Archdeacon King's Visitor, "should be postponed for a short time, as there was a proceeding then pending in the Supreme Court, which would render their publication premature?"

1827.
8 June.

In reply to which, I beg to state that, on being informed of the doubts which had arisen as to the right of the Archdeacon to exercise the powers of the King's Visitor, I pointed out to the Attorney General that the Archdeacon was mentioned as King's Visitor in the King's Instructions to me, and I purposed, as a means of removing those doubts, to announce him officially as such in the Gazette; on which occasion Mr. Bannister, the Attorney General, addressed a letter to me, of which I enclose a copy, recommending for the reasons therein stated that the proposed notification should not take place at that time. This is probably the circumstance, to which you allude.

Details *re* delay
in publishing
charter of
incorporation
of church and
school estates.

As to the Instructions for publishing the Charter, they were addressed to me personally, and I brought them out in original. But a copy was in the Colony long before my arrival,* having been furnished to the Archdeacon, when in England, and which copy was communicated to me by Lord Bathurst's desire, when I met the Archdeacon at his Lordship's Seat at Cirencester in the month of November, 1824, previous to my appointment to this Government; and I presume it was communicated to Sir Thomas Brisbane on the Archdeacon's arrival.

As to the delay of the publication of the Charter, I think it was occasioned by the absence of the Archdeacon, who went to Van Diemen's Land soon after my arrival, his presence being considered necessary at the first General Meeting of the Corporation.

I have thought it better to give this explanation than to confine myself strictly to replying to the question, which forms the subject of your letter, as I am not aware of its connection with the complaint of the Archdeacon against Judge Stephen for his conduct on the trial of the Magistrates, which took place last month.

I have, &c.,

RA. DARLING.

[Enclosure No. 3.]

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

Sir,

Sydney, 27th April, 1827.

I have the honor to acknowledge the receipt of your Excellency's communication of this day's date. As Mr. Stephen deems the explanation I have requested your Excellency to afford in reference to my own recollections upon the subject of consequence

* Note 97.

1827.
8 June.

Papers brought
from England
by R. Darling.

to his case, I am sure that your Excellency will consider that as a sufficient excuse for troubling your Excellency still further. In reference to that part of Your Excellency's letter, in which it is stated "that Your Excellency brought out the Instructions for publishing the Charter in the Original, but that a copy was in the Colony long before," I think there must be some misapprehension, and that your Excellency blends *the instructions* to issue the Charter with *the draft of the Charter* itself. The latter was brought out by the Archdeacon,* but not the former; at least I have a perfect recollection of assisting Sir Thomas Brisbane to look over all his Dispatches, to see if he could find the Charter, which the Archdeacon believed had been transmitted, but from some cause had been mislaid. Had the Instructions been known to Sir Thomas Brisbane, he would have issued the letters Patent immediately. I have a very clear recollection too of seeing two copies of the Instructions at the same time in your Excellency's possession, and either of hearing your Excellency say, or of reading something endorsed upon one copy, that they were intended to have been sent to Sir Thomas Brisbane. This fact can be ascertained by referring to the two Copies. May I request of Your Excellency to clear up this point, and to excuse the trouble I am compelled to give to your Excellency.

I have, &c.,

FRANCIS FORBES.

[Enclosure No. 4.]

GOVERNOR DARLING TO CHIEF JUSTICE FORBES.

Sir,

Government House, 28th April, 1827.

I am sorry to find from your letter of yesterday that I had blended, as you suppose, the *Instructions to issue the Charter* with *the Draft of the Charter* itself. It was the latter, which was brought out by the Archdeacon.

Instructions
brought from
England by
governor.

You will find, I think, that Your recollection is not perfect, when you speak of having seen in my possession two copies of the Instructions "at the same time." When you stated in your former letter that the Instructions were brought out in duplicate "for the first time" by me, I did not notice the mistake, not conceiving it of importance. The fact is that some of my Instructions under the King's Sign Manual were furnished in duplicate. The Documents, which you saw in my possession, were the original Instructions, to which the Draft of the Charter was annexed, and a separate Copy of the Charter, similar to that with which the Archdeacon was furnished, and which copy it appears by the concluding paragraph was intended to be sent to Sir Thomas Brisbane, but was given to me at the Colonia'

* Note 97.

Office soon after my appointment. The endorsement, to which you allude, is on the latter document. I hope this explanation will clear up the point with respect to the Duplicate Instructions.

1827.
8 June.

I have, &c.,

RA. DARLING.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship *Florentia*; acknowledged by Governor Darling, 31st January, 1828.)

My dear Sir,

Downing Street, 10th June, 1827.

10 June.

An application having been made to this Department by Sir Thomas Brisbane in favor of Mr. Robert Wallace Murdoch, who is about to proceed to New South Wales and is anxious to obtain a Grant of Land, I have to request that you will comply with Mr. Murdoch's wishes, so far as may be consistent with the existing Regulations.

Recommendation of R. W. Murdoch for land grant.

I remain, &c.,

R. W. HAY.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per barque *Faith*.)

My dear Sir,

Parramatta, 10th June, 1827.

I am unwilling to allow the present opportunity to escape without mentioning that Colonel Dumaresq, my private Secretary, sailed for England this day week in the *Australia*, charged with my Despatches on several important subjects. They were so voluminous that there has not been time to have the Duplicates prepared by this opportunity, which I hope his previous arrival will render of no importance. I shall not fail, however, to forward them by the next Vessel.

Departure of H. Dumaresq with despatches.

I am preparing to embark the day after to-morrow in His Majesty's ship *Rainbow*, the Hon. Captain Rouse, for the purpose of Inspecting the Settlements at Moreton Bay, Port Macquarie, and New Castle. I have long been anxious to accomplish this object, but without effect. As Colonel Dumaresq's arrival will put you in possession of the state of matters here, I shall the more earnestly devote my attention to the object, I have now in view, and should be very glad if I am able to make a favourable Report of these Settlements or to suggest anything for their improvement. I have, however, again to regret my inability to complete the arrangements for the Civil Service at this moment; but you may be assured they shall not be delayed, when I can spare time to attend to them.

Proposed visit to northern settlements.

I remain, &c.,

RA. DARLING.

1827.
11 June.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship John; acknowledged by Governor Darling,
4th December, 1827.)

Volume of acts
of council, etc.,
acknowledged.

Sir, Downing Street, 11th June, 1827.

I have the honor to acknowledge the receipt of your letter of the 16th of November last, inclosing a Printed Copy of the Acts of Council, Proclamations, Government Orders, and Notices, which have been issued from the time of your assuming the charge of the Government of New South Wales to the end of June, 1826; and, in requesting that you will accept my thanks for this very useful collection, I beg to state that I shall be glad to receive the subsequent series of the same documents, at the periods at which it is proposed in your dispatch to forward them.

I have, &c.,

R. W. HAY.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 7, per ship John.)

12 June.

Approval of
inquiry re
department of
naval officer.

Sir, Downing Street, 12th June, 1827.

I have the honor to acknowledge the receipt of your dispatch, marked "separate" of the 21st October, 1826, reporting the measures, which you have taken (previously to placing Captain Piper, the present Naval Officer, in the Situation of Collector of the Customs) for ascertaining the manner, in which he has discharged his duty, and whether he is deserving the appointment, which the Commission forwarded to you by my Predecessor on the 1st of January, 1826, would confer on him; and I beg to acquaint you in reply that the enquiries, which you have directed into this subject, meet with the Approbation of His Majesty's Government.

I have, &c.,

GODERICH.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 8, per ship John.)

13 June.

Approval of
appointment of
W. H. Moore.

Sir, Downing Street, 13 June, 1827

I have the honor to acknowledge the receipt of your dispatch of the 27th October last, marked separate, reporting the circumstances under which you had appointed Mr. Moore, the Government Solicitor, to carry on the duties of Attorney General, until the arrival of Mr. Bannister's Successor; and I have now to convey to you the approbation of His Majesty's Government in regard to the arrangements, which you have adopted with a view to that object.

I have, &c.,

GODERICH.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 9, per ship John.)

1827.
14 June.

Sir,

Downing Street, 14 June, 1827.

I have the honor to acknowledge the receipt of your letter of the 1st November last, marked "Separate," transmitting copies of a correspondence, which had passed between yourself and Mr. Bannister, in consequence of his having applied to you to authorize, on the part of the Crown, the prosecution of the Editors of the Sydney Gazette and the Australian Newspaper for Libels, which appeared in those papers on the 14th and 18th October, 1826; And I beg to acquaint you in reply that there do not appear to have been any grounds for affording Mr. Bannister the assistance in question, and that you judged perfectly right under the circumstances in declining to interfere in the business.

Approval of
refusal to
prosecute
for libel.

I have, &c.,

GODERICH.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 10, per ship John.)

Sir,

Downing Street, 15 June, 1827.

15 June.

I have received your dispatch, No. 89, of the 15th November, reporting that you had, upon the recommendation of the Executive Council, founded upon the representations of Captain Rossi, the principal Superintendent, given orders that the Police Establishment should be augmented and the Salaries of the Individuals, composing it, be increased.

Approval of
reforms in
police
establishment.

The importance of establishing an efficient police, which I am aware cannot be maintained but at a considerable expense, induces me not to refuse my acquiescence in this additional expenditure, although I cannot approve of its having been incurred without previous authority from Home.

In signifying, therefore, my acquiescence of the increased rates of pay and the other changes, which circumstances have induced you to introduce into the Police Department, I feel it my duty to take this opportunity of calling your attention to the Instructions, which have been conveyed to you by my Predecessor, in respect to the Public Expenditure of your Government, and by which you are forbidden, excepting in cases of extreme emergency, to incur any expense exceeding Two Hundred Pounds, or to authorize any augmentation of Salary to take place, or any new appointments to be made, until you shall have reported the grounds, on which such additions of expense are considered necessary, and until the sanction of the Secretary of State shall have been first obtained.

Limitation of
governor's
power over
expenditure.

I have, &c.,

GODERICH.

1827.
16 June.

VISCOUNT GODERICH TO GOVERNOR DARLING.
(Despatch No. 11, per ship John.)

Sir,

Downing Street, 16 June, 1827.

Approval of
proposed
establishment
of colonial
secretary,

I have the honor to acknowledge the receipt of your dispatch, No. 90 of the 16th November last, submitting for consideration the proposed Establishment for the Colonial Secretary's Office, and reporting that you had appointed an "Assistant Secretary" with a Salary of £450 per annum, in lieu of the Chief Clerkship, Mr. Crawford, who held the latter Situation, having resigned.

except
appointment
of assistant
secretary.

Under the circumstances, which you have stated with respect to the Business of that Department, and the assurance, which is contained in your dispatch, that, as soon as their Services can be dispensed with, some of the persons, at present employed as Extra Clerks, will be discontinued, I have to approve, with the exception of the appointment of Assistant Secretary, of the Establishment at which you have fixed this Department of your Government. You will understand, however, that my objection to the particular appointment in question has no reference to Mr. Harrington's employment in that capacity, or to the amount of Salary which you have assigned to him; but that, having given directions for reducing similar Situations, where they exist in other Colonies, it will be impossible with any degree of consistency to permit such an appointment now to take place for the first time in New South Wales; and as Mr. Harrington, in the capacity of Chief Clerk, will be enabled to afford as effectually the assistance required by the Colonial Secretary, and may be made equally responsible for the details, as if the arrangement, which you have proposed, had been carried into effect, I see no grounds for making the exception in favor of that Colony.

I have, &c.,

GODERICH.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 12, per ship John.)

17 June.

Sir,

Downing Street, 17 June, 1827.

Approval of
appointment
of storekeeper.

I have received your dispatch, No. 91 of the 17th November last, acquainting me that you have provisionally authorized the issue of 5s. Sterling pr. diem to Mr. Clements, whom you have appointed to the charge of the Stores of the Civil Government, which for want of proper superintendence have been hitherto plundered to a considerable extent. And I do myself the honor of acquainting you, in answer, that, under the circumstances of the case, the arrangement, which you have adopted

for the better security of the Stores in question, and the amount of the remuneration, which you have granted to the Person under whose charge they will in future be placed, have met with my approbation.

I have, &c.,

GODERICH

1827.
17 June.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 13, per ship John.)

Sir,

Downing Street, 18 June, 1827.

18 June.

I have the honor to acknowledge the receipt of your dispatch, No. 92 of the 18th November last, in reply to one, which had been addressed to you by my Predecessor relative to Mr Therry, the Roman Catholic Clergyman, whose immediate departure from the Colony you had not deemed it expedient to enforce, for the reasons stated in your dispatch; and I have much pleasure in acquainting you that the discretion, which you have exercised on this occasion, has met with the approbation of His Majesty's Government.

I have, &c.,

GODERICH.

Approval of
action re Rev.
J. J. Therry.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 14, per ship John.)

Sir,

Downing Street, 19 June, 1827.

19 June.

I have received your dispatch No. 93 of the 19th of November last, transmitting the proceedings of a Court of Enquiry, which you had directed to assemble, in pursuance of your Instructions, for the purpose of enquiring into certain circumstances connected with the conduct of Lieut. King, and reporting his dismissal from the Situation, which he held of Barrack Master, in consequence of the proceedings of the Board having established the facts, which were alleged against him. In approving, under those circumstances, of the removal of Lieut. King, I have much pleasure in confirming the appointment of Mr. Jackson as his Successor.

I have, &c.,

GODERICH.

Dismissal of
barrack master
approved.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 15, per ship John; acknowledged by Governor Darling, 26th December, 1827.)

Sir,

Downing Street, 20 June, 1827.

20 June.

I have the honor to acknowledge the receipt of your dispatch, No. 94 of the 20th November last, reporting the discontinuance of the Allowance, which has hitherto been received

Despatch
acknowledged.

1827.
20 June.
Proposed
appointments
of stipendiary
magistrates.

generally by the Magistrates under the head of Commutation in lieu of Rations, etc., by which a saving of £2,200 has been effected by the public, and submitting the propriety, in addition to the two Stipendiary Magistrates already nominated in pursuance of the Instructions,* conveyed to Sir Thomas Brisbane in 1825, of appointing four others at the same rate of Salaries (namely £300 per annum each) as the former have been permitted to receive.

It is not my intention to question the propriety of augmenting the number of stipendiary Magistrates to that which has been contemplated; but, at the same time, I would beg to suggest whether, should those Situations be not already filled up, and should the exigencies of the Colony not require immediately this additional Magisterial assistance, it may not be advisable to defer *completing* the number now fixed, until the benefits of the measure shall have been more generally felt, and thereby better appreciated by the Colonists, than the limited experiment, which has been yet made, has admitted of.

Allowances
to military
officers.

I have no objection to sanction the allowance of 5s. per diem, which you have requested authority to make to the Officer in Command of the Troops at New Castle on the discontinuance of the Situation of Commandant; but with respect to the additional allowance, which you have recommended should be given to the Officers employed as Magistrates in detached places, in consequence of the arrangements for the suppression of Bushranging, I see no grounds for issuing to them, on account of that particular duty, any remuneration beyond what may be sufficient to cover their additional expenses, and which appear to have been provided for by the contingent Allowance at the rate of 5s. pr. day, which you have already granted to them; for, upon this principle, no Officer would be employed upon any duty of responsibility without equally claiming an allowance beyond his regular pay, which must excepting in very particular cases be considered as the only remuneration to which he is entitled.

I have, &c.,

GODERICH.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 16, per ship John.)

21 June.

Statement by
F. N. Rossi re
alleged slave
traffic.

Sir,

Downing Street, 21 June, 1827.

I have the honor to acknowledge the receipt of your despatch, marked Separate of the 7th December last, transmitting the copy of a Report, addressed to you by the Acting Attorney General and the Magistrates associated with him, together with a declaration, made by Captain Rossi on the Allegations brought against him by William Kendrick, formerly a private in the

22nd Regiment of Foot, as to his having connived at the Slave Trade, which it has been attempted to prove has continued to exist at the Mauritius. And I request that you will acquaint Captain Rossi that His Majesty's Government have received with much satisfaction the statements, which you have now sent home, in contradiction to those which have been made by the Individual in question.

I have, &c.,

GODERICH.

1827.
21 June.

Statement by
F. N. Rossi re
alleged slave
traffic.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship John; acknowledged by Governor Darling.
4th December, 1827.)

Sir,

Downing Street, 22 June, 1827.

22 June.

The Lord Viscount Goderich having received a petition from a Convict in New South Wales, named George Martin, praying that he may receive the benefit of emancipation, his Lordship has transmitted the same to the Secretary of State for the Home Department; and I am now directed to request that you will cause the Prisoner to be informed that His Majesty's Government see no ground to warrant the granting the prayer of his Petition.

Refusal of
request of
G. Martin for
emancipation.

I have, &c.,

R. W. HAY.

UNDER SECRETARY HORTON TO GOVERNOR DARLING.

(Per ship John.)

My dear Sir,

Downing Street, 22nd June, 1827.

I am obliged to trouble you privately on the subject of a Claim upon your Sheriff, Mr. Mackaness. I enclose a Letter addressed to him by a Friend of mine, and also a Copy of that Letter for your own perusal, from which you will perceive that my object is to further Mr. Tollet's object of obtaining from him the payment of an Annuity of £120, which Mr. Tollet thinks (and I cannot but privately concur with him) unjustifiably withholden from an aged, infirm and destitute Lady. This Annuity was to have commenced from the 1st of October, 1823, but Mr. Mackaness has hitherto only remitted £90 on account of it.

Claim on
J. Mackaness
for payment
of annuity.

Under the pressing circumstances of the case, and quite as much for Mr. Mackaness's sake as for the Lady's, I have felt myself justified in authorising the Agent to pay Mrs. Heming £120, the amount of the Annuity for *one* Year, to enable her to subsist until an answer can be received from Mr. Mackaness. I shall, therefore, be much obliged by your sending for Mr. Mackaness, and delivering to him my Friend's Letter, and, at the same time, stating to him that I have directed this advance to be made on his account, and that I hope that he will immediately make arrangements for the discharge of the Arrears, and for the future

Advance made
to annuitant.

1827.
22 June.
Future
payments.

payment of the Annuity half-Yearly to the Colonial Treasurer. You will also be good enough to direct the Colonial Treasurer to inform the Agent from time to time that such payments have been made, as I am anxious to save myself all future trouble upon the subject.

I remain, &c.,

R. W. HORTON.

[Enclosure.]

[This was a letter from Mr. G. Tollet, dated at Betley Hall, 26th May, 1827, to the sheriff, John Mackaness. It claimed, on behalf of the sister of the late Dr. Heming, an annuity of £120. J. Mackaness held £1,200 as executor for Dr. Heming. The sister, Miss Heming, was prepared to surrender the capital to Mackaness in return for a life annuity at the rate of 10 per cent.]

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship John; acknowledged by Governor Darling, 4th December, 1827.)

30 June.
Claim made on
J. Armstrong.

Dear Sir,

Downing Street, 30 June, 1827.

I am directed by Lord Viscount Goderich to transmit to you the enclosed Memorial from a Tradesman, named John McLellan, and to request that you will forward the same privately to Mr. Armstrong with the view of his causing the debt due to Mr. McLellan to be liquidated.

I am, &c.,

R. W. HAY.

[Enclosure.]

MEMORIAL TO VISCOUNT GODERICH.

• Memorial to
Viscount
Goderich from
J. McLellan.

THE respectful Memorial of John McLellan of Ticheborne Street, near the Haymarket, Tailor,

Humbly Sheweth,

That your Memorialist supplied John Armstrong, a Surveyor, late of Basingstoke, but now in the employ of His Majesty's Government at Sydney Town, New South Wales, with various articles of Clothing to the amount of Twenty pounds, fifteen Shillings, previous to his sailing for that Colony in the year 1825, which sum is still owing, and no notice taken of repeated applications for payment.

Your Memorialist is the father of Eleven Children, all dependent upon him for support, and in a very small way of business, and straitened circumstances; therefore, Most respectfully and earnestly solicits the interference of Your Lordship's well known friendly disposition in this case of peculiar hardship, of which favor Your Memorialist shall not fail to retain the Most grateful recollection.

JOHN MCLELLAN.

13 Tichborne St., Haymarket,

22nd June, 1827.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship John: acknowledged by Governor Darling.
4th December, 1827.)

1827.
30 June.

Sir, Downing Street, 30 June, 1827.

I am directed by Lord Viscount Goderich to transmit to you the enclosed letter from a Widow Lady, named Alderson, in behalf of her two Sons, who she is apprehensive, for the reasons stated in her letter, may experience difficulties in obtaining Grants of Land on their arrival at New South Wales. Although Lord Goderich feels convinced there are no grounds for the fears this Lady has expressed, yet, with the view of satisfying her mind upon the subject, I have been directed by his Lordship to address this communication to you in their favor.

Request for
land grants for
A. and J.
Alderson.

I have, &c.,

R. W. HAY.

[Enclosure.]

[This letter was dated 29th June, and referred to Adam Abel and James Alderson, the sons of a London solicitor. They were provided with a capital of £500.]

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship John; acknowledged by Governor Darling.
3rd September, 1828.)

Sir, Downing Street, 30 June, 1827.

With reference to Lord Goderich's dispatch of the 13th Ultimo on the subject of certain Stores, which you had requested might be provided and sent out to New South Wales for the use of that Government, I am directed by his Lordship to transmit to you the enclosed copy of a letter from the Treasury, together with one from the Board of Ordnance on that subject; and I am to request that you will transmit to me, as soon as possible, the information, which is required in respect to the Articles adverted to.

Information
required re
requisitions
for stores.

I have, &c.,

R. W. HAY.

[Enclosure.]

MR. W. HILL TO UNDER SECRETARY HAY.

Sir, Treasury Chambers, 7th June, 1827.

I have it in command from The Lords Commissioners of His Majesty's Treasury to transmit to you the accompanying copy of a Letter from The Secretary to the Ordnance of the 4th Ultimo, in reply to a Letter from this Board of the 31st of March last, inclosing the copy of a Dispatch from The Governor of New South Wales, accompanied by various Requisitions for Stores intended for the use of that Government; And I am to

1827.
30 June.
Information
required re
requisitions
for stores.

desire that you will lay the same before Lord Goderich, and acquaint His Lordship that My Lords have apprized the Secretary to the Ordnance, for the Information of The Master General and Board, that they entirely concur in the Reductions and alterations, made in the Requisition for the supply of Articles for New South Wales; and, with respect to the Articles, for which further Information is required, My Lords have informed the Secretary to the Ordnance that they would call upon Lord Goderich to supply it, and that My Lords do not apprehend that any Inconvenience will arise from the delay. With respect to the Seeds and Plants, it appears to My Lords that a Sum of about £500 may be properly expended on the Assortment I am accordingly to request that you will move Lord Goderich to call upon the Governor of New South Wales for the Information and explanation suggested by the Board of Ordnance.

I am, &c.,
W. HILL.

[Sub-enclosure.]

[The letter from the office of ordnance contained detailed criticisms on articles requisitioned.]

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch marked "Circular No. 3," per ship Woodlark; acknowledged by Governor Darling, 31st January, 1828.)

— July.
Transmission of
order in
council.

Sir, Downing Street, — July, 1827.

I do myself the honor of transmitting to you herewith an Order of His Majesty in Council, dated the 30th of April, for regulating the Trade within the limits of the East India Company's Charter, which Order is the same as that of which the Draft was inclosed in Earl Bathurst's dispatch of the 10th of April last.*

I have, &c.,
GODERICH.

[Enclosure.]

[This order in council has been omitted; see page 234.]

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch marked "Circular No. 4," per ship Woodlark; acknowledged by Governor Darling, 16th February, 1828.)

1 July.
Detailed
statements of
revenue and
expenditure
required.

Sir, Downing Street, 1 July, 1827.

I have to request that, notwithstanding the transmission of what has been called "the Blue Book" for the current year, you will be good enough to furnish me with a Debtor and Creditor Account of the whole Revenue and Expenditure of the Colony, under your Government, for the last three years, specifying every

variety of receipt from *whatever* source derived, as well as the nature of that source, whether from the Customs, Internal Duties, or any other mode of Taxation, with every detail relating thereto. I have also to request that you will transmit an equally minute statement of the appropriation of every item of Expenditure.

1827.
1 July.

Detailed
statements of
revenue and
expenditure
required.

As these accounts will be necessary for the information of the Finance Committee, which it is understood will be appointed in the next Session of Parliament, it will be desirable that you should transmit them in a printed Tabular form, arranged in the most clear and perspicuous manner wh. can be suggested by those, who are most practically acquainted with the subject; and you will take care that such printed statement be carefully examined and its correctness verified.

You will understand that such a statement is required as may enable His Majesty's Government to furnish such conclusive information upon every point, directly or indirectly, connected with the general subject of its Finances, as may be required during the investigation of a Committee of the House of Commons.

As it is of the utmost moment that no time should be lost in the transmission of these details, if the circumstance of printing them should be attended with material delay, it will be necessary for you to transmit them at once in original.

I have, &c.,
GODERICH.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 17, per ship John.)

Sir,

Downing Street, 5 July, 1827.

5 July.

I have received your dispatch No. 99 of the 21 Decr., in which you refer for the consideration of His Majesty's Government the copy of a Grant of 10,000 Acres of Land, made by Sir Thomas Brisbane to Messrs. Berry and Woolstonecraft, Merchants of Sydney, on the condition of their maintaining 100 Convicts free of Expense to Government, and you recommend that the Grant in question should be delivered to the Parties, although circumstances have rendered the condition nugatory.

Confirmation of
land grant to
A. Berry and E.
Woolstonecraft.

I agree with you in opinion that, as no fault is to be found with the Grantees for not having employed the stipulated number of Convicts, the Government not having been able to supply them, it will be proper to place the Parties in possession of the Deeds, under which the Land has been granted to them; but, before the measure is finally adopted, care should be taken to establish the Rights of the Government to call upon the Parties

1827.
5 July.

to fulfil their engagements in regard to the maintenance of Convicts, should the Government think fit at any subsequent period to do so.

I have, &c.,

GODERICH.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship John; acknowledged by Governor Darling, 10th December, 1827.)

Sir,

Downing Street, 5 July, 1827.

I am directed by Lord Viscount Goderich to transmit to you herewith the enclosed applications from Lieut. Colonel Balfour and Assistant Surgeon Turner to be reimbursed the expenses, incurred by them respectively in landing and conveying your dispatches to London; and his Lordship desires that you will make arrangements for preventing in future all claims of this description, either by sending home your dispatches according to the usual Post Office Regulations, or by giving written Instructions to the Masters of Vessels or other persons, whom you may think proper to entrust with them, not to convey them to London under their own charge, but to deliver them over in all ordinary cases to the Post Master of the first Port, at which the Vessels may touch on reaching this Country.

Instructions
re carriage
of despatches.

I have, &c.,

R. W. HAY.

[Enclosure No. 1.]

LIEUT.-COLONEL BALFOUR TO UNDER SECRETARY HAY.

Sir,

39 George St., Portman Sq., 29 June, 1827.

I have had the honor to receive your letter of the 28th Inst.; in reply beg to state that, having been directed by General Darling to take charge of the dispatches, which I delivered at the Foreign Office on Thursday, the 21st Inst., I certainly considered that I should not have discharged the trust reposed in me according to His Excellency's wishes, had I remained in the ship with the dispatches till she reached the London Docks, especially as I had reason to believe there were some communications of much interest, more particularly should the dispatches of the Ship Regalia not have arrived. I, therefore, at considerable inconvenience left my family on Board, and took a pilot Boat sixty Miles from Portsmouth, where I landed, and as soon as possible proceeded to Town. The exact amount of my extra expenditure I cannot pretend to state positively; but I believe I am within it in naming Twenty Pounds. I have, &c.,

Claim for
expenses in
carriage of
despatches.

W. BALFOUR.

[Enclosure No. 2.]

ASSISTANT SURGEON TURNER TO UNDER SECRETARY HAY.

1827.
5 July.

Sir, 76 Westmoreland Place, City Road.

Claim for
expenses in
carriage of
despatches.

I have the honor to request the favor of your submitting to The Rt. Honble. The Secretary of State my request for an allowance for conveying dispatches from His Excellency the Governor of New South Wales to His Lordship on the 22nd Inst. In estimating the expences from the channel in a Pilot's Boat to Portsmouth, and thence to London, I trust that His Lordship will not consider they are overrated at twenty five Pounds.

I have, &c.,

C. TURNER, Assist. Surgeon, R. Artillery.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship John.)

Sir, Downing Street, 5 July, 1827.

I have the honor to acknowledge the receipt of your letter of the 20 Decr., in reply to one which I addressed to you on the subject of an additional Grant of Land; for which application had been made by Mr. Icely in 1825; and, having laid the same before Lord Viscount Goderich, I am directed by his Lordship to desire that Mr. Icely, whose capital appears to be very considerable, may be allowed to purchase, in addition to the quantity which he has already acquired, Land to the utmost limits, which by the late Regulations a Settler can be permitted to obtain.

Land to be
purchased by
T. Icely.

I have, &c.,

R. W. HAY.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per barque Faith.)

Dear Sir, Government House, 5th July, 1827.

As I understand Mr. Forbes has mentioned that I am in the habit of interfering with the proceedings in the Courts of Justice, and which, you will have seen by the Papers transmitted to you, has been stated in the "Australian," I am anxious to put you in possession of the *only* instance, which I am aware of, that can be produced as affording any ground for such an assertion.

Alleged
interference of
governor in
law courts.

Mr. McLeay, conceiving that Mr. Forbes was not giving that support to the Government, which he considered to be his duty, but that he was disposed to favor Dr. Wardell, took an opportunity, without however previously consulting me, of asking Mr. Forbes in my presence to try a case of Libel* at the instance of Mr. Carter, the chairman of the Quarter Sessions, against the *Australian*, and not to leave it to Mr. Justice Stephen, as it

Request to
F. Forbes to try
R. Wardell
for libel.

1827.
5 July.

Reasons of
A. Macleay
for request.

was supposed Mr. Forbes intended. Mr. McLeay afterwards informed me that his object in doing this was to identify Mr. Forbes more immediately with the Government, and to show, if he could induce him to preside at the Trial, that Mr. Forbes was not disposed to shrink from his duty on account of his intimacy with Dr. Wardell.

This appeal, on the part of Mr. McLeay, was perhaps not altogether judicious; and Mr. Forbes showed some dissatisfaction. The conversation ended by his adverting to the arrangements, which have been made by himself and Mr. Justice Stephen for the business of the Courts.

Correspondence
with F. Forbes
re proposed
trial.

On the following day, the 3rd March, I went out to Parramatta, and apprehending that the arrangements, above alluded to, might interfere with the Trial of Dr. Wardell, I wrote Mr. Forbes a confidential letter, of which I enclose a copy, pointing out how desirable it was that the Trial should not be delayed; to which I received an answer of which I transmit an extract.

I replied to this on the 8th March, having seen Mr. Carter that morning, and the enclosed copy of my Letter will explain what had passed on the occasion. I have only to add the copies of two other letters, which closed the correspondence, and to remark that Dr. Wardell's Trial has not yet taken place.

I have been desirous to put you in possession of the above, being the only instance, in which I am conscious of having attempted to interfere in the proceedings of the Courts. Whether the interference in this case is of such a nature as to merit any attention, or whether it was unwarrantable on the part of Government, whose character and that of its Officers were the objects of Dr. Wardell's incessant attack, I shall very willingly leave to others, who are not interested in the matter, to decide.

I remain, &c.,

RA. DARLING

[Enclosure No. 1.]

GOVERNOR DARLING TO CHIEF JUSTICE FORBES.

My dear Judge,

Parramatta, 3rd March, 1827.

Arrangements
for prosecution
of R. Wardell.

It has occurred to me, since coming to this place, that what you mentioned yesterday respecting the course of proceeding in the Supreme Court, that the change may interfere with what appears of some importance, which is, that the Criminal Prosecution in the case of Mr. Carter against the *Australian* should precede the Civil Action.

The Papers have now had a sufficient run; and, seeing, as every one must, the mischief, which is daily resulting from the course they have pursued, the Government cannot with propriety any longer abstain from endeavouring to check the evil.

Mr. Carter is a faithful adherent of the Government, and, as such in his official character, is certainly entitled to its protection and support.

1827.
5 July.

Arrangements
for prosecution
of R. Wardell.

If any step, which Mr. Stephen has taken, has rendered it necessary to deviate from the course, which was adopted, and that this deviation is likely to prejudice Mr. Carter's cause, I am quite satisfied there will be no objection on his part to remedy the inconvenience; and I beg you will arrange this with him. As I find I have still a number of letters to write Home, I shall remain here for that purpose until Monday Morning, when I hope to have the pleasure of meeting you at Council.

I remain, &c.,

RA. DARLING.

[Enclosure No. 2.]

EXTRACT of a Letter addressed by His Honor the Chief Justice Forbes to Lieut. General Darling, dated 3rd March, 1827.

"MR. STEPHEN informed me this morning that he had declined trying any criminal case after Wednesday, as Thursday was the first day of term, and, by the Rules of the Supreme Court, the first week of term was set apart for other business. He was right; but, under particular circumstances, he might have taken any particular case of importance, Friday or Saturday. Yesterday, I tried Stanley, while Mr. Stephen went on with Civil Business. He informed me further that the condemned cells were reported to him to be so filled that he was fearful, by adding to the number of prisoners, of causing disease in the Gaol. I can only profess my readiness to hear any case, which may be called during the days I sit in Court, or to join Mr. Stephen, when the case may be deemed of sufficient magnitude to be tried at Bar. I think prosecutions for offences more immediately against the Government of the Colony are of this description; and, being a member of the Executive Council, I should require the assistance of my Associate in every case, which in any way partook of such a character."

Arrangements
for criminal
trials.

FRANCIS FORBES.

[Enclosure No. 3.]

GOVERNOR DARLING TO CHIEF JUSTICE FORBES.

My dear Judge, Government House, 8th March, 1827.

I communicated with Mr. Carter on the subject of your letter of the 3rd, and have seen him this morning respecting it. He informs me there is no open day during the present term, and that the Trial cannot come on, unless a day be specially appointed for the purpose. If this cannot be done, I should hope there will be no difficulty in making arrangements for bringing on the cause immediately after the term, and that you will have

Special day
required for
trial of
R. Wardell.

1827.
5 July.

Special day
required for
trial of
R. Wardell.

the goodness to name a day, so that Mr. Carter may be prepared in time with his witnesses. He informs me that Saturday last was fixed at Dr. Wardell's request, and that Stanley's Trial having been brought on instead has embarrassed and defeated his arrangements.

It appears to me of some importance under present circumstances that the Trial should not be delayed. The Government at Home will not be satisfied, if we do not exert ourselves to check the abuse, which the Papers have determined to continue.

Believe me, &c.,

RA. DARLING.

[Enclosure No. 4.]

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

Dear Sir,

Sydney, 9th March, 1827.

Limitations to
correspondence
between
governor and
chief justice.

I fear that my Note of the 3rd Instant was not taken as it was meant. I intended from the measured terms, in which it was worded, to convey an intimation to your Excellency that I was unwilling to touch upon any matter pending before me in Court. I may appeal with confidence to my communications upon every other occasion to prove my readiness to afford Your Excellency the best advice within my power; but my oath of Office prohibits me in express words from holding intercourse with the Government in any case, in which the Government has a feeling; and the more confidential the communication, the more it comes within the prohibition so solemnly enjoined. I am aware of the embarrassing situation of your Excellency from the want of competent legal advisers; and I have sometimes gone a little further than under other circumstances I should have felt myself justified in doing. But there is a boundary, which I dare not pass. Your Excellency may not be aware that even the very passing intercourse, which took place some short time ago upon the subject of Mr. Carter's case, has become the basis of a report that the Colonial Secretary has applied to me to try the case against the *Australian* for a libel; and, when I mention that I heard it last evening at my own Table, and as coming from the Editor himself, all further enquiry is of course precluded. I mention this incident to show how essential it is that I should avoid the possible supposition of holding a private intercourse with Government upon a public prosecution. Of course, I cannot notice the report or enter into explanations; but the circumstance has given me a good deal of pain, and will occasion some foreseen embarrassments.

Criticism of
conduct of
W. Carter.

I beg to return Mr. Carter's letter to the Colonial Secretary; he should know his course better than to apply to have a day fixed for a Government prosecution through the Governor to the

Chief Justice; and, if he has stated to Your Excellency that last Saturday was fixed with the knowledge and assent of the Court, he has stated that which was not true. He knows the rules of the Court; why he has not followed them I can only conjecture; but, as an Officer of the Supreme Court, pursuing the course that he appears to have done, I should but for my respect for your Excellency severely reprehend him.

1827.
5 July.

I beg to remain, &c.,

F. FORBES.

[Enclosure No. 5.]

GOVERNOR DARLING TO CHIEF JUSTICE FORBES.

My dear Judge, Government House, 10th March, 1827.

I am just favored with your letter, and am quite alive to the force of your observations. But, as I was informed that it rested with you to fix a day for the trial, I am not aware that there could be any objection to my consulting you on that point.

Reply by
governor.

As to the merits of this particular question, I have never thought of speaking to you on them, that I am aware of; and, however anxious Mr. McLeay may have been that you should try the cause, you will recollect I did not second him very warmly.

Believe me, &c.,

RA. DARLING.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 18, per ship John; acknowledged by Governor Darling, 27th March, 1828.)

Sir, Downing Street, 6 July, 1827.

6 July.

I have received your dispatch, No. 100 of the 22nd December last, transmitting the copy of a letter, which you had received from the Arehdcaeon, in answer to a communication, which you appear to have made to him relative to the proceedings necessary to be adopted for the effectual Civilization and conversion to Christianity of the Native Black population of the Colony under your Government.

The problem
of civilizing
the natives.

There can be no question as to the importance of a measure, which would contribute to the happiness and comfort of so large a body of people by withdrawing them from the wandering life, which, in their present uncivilized state, they must necessarily lead; but, whilst due attention is paid to this desirable object, others of comparatively greater importance must not be neglected; and, as a difficulty is already felt from the want of adequate funds in providing the necessary religious Instruction for the benefit of the Colonists generally, I need not point out to you the expediency of suspending for the present any extensive exertions, leading to expense, which it might otherwise be expedient to use

1827.
6 July.

The problem
of civilizing
the natives.

in favor of the Aborigines of New South Wales. The Archdeacon's proceedings should, therefore, be confined to the obtaining correct information as to the numbers and condition of those people, in order that the Government may be prepared with the means of adopting more effectual measures in furtherance of the object in contemplation, whenever circumstances shall admit of the formation of the Establishments, which the Archdeacon is of opinion will be necessary for that purpose. I have, &c.,

GODERICH.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship John; acknowledged by Governor Darling, 4th December, 1827.)

Sir,

Downing Street, 6 July, 1827.

Refusal of
land grants for
E. Hawker and
Sir M.
Seymour.

I have had the honor to receive and lay before Lord Viscount Goderich your letter of the 25th December last, on the subject of the applications, which were forwarded to you from Captain Hawker and Sir Michael Seymour for Grants of Land, in addition to those which it was understood they already possessed in New South Wales. Lord Goderich fully concurs in the observations contained in your letter, as to the irregularity which would attend a compliance with the wishes of those Officers and the disadvantages of establishing a practice, open to so many abuses as it would necessarily lead to. His Lordship, therefore, has been induced to decide that additional Grants should not be made out in favor of the parties in question, whose original application he feels confident would not have been listened to, had the late Secretary of State been aware of all the circumstances, which you have now stated. At the same time, I am directed to acquaint you that there will be no objection to an additional Grant being made to Dr. Reid, who appears to be their nominal Agent, as well as a Partner in the undertaking, in which they have engaged, to the extent which his surplus Capital, amounting as is represented by the Land Board to £3,000, will justify; and it will rest with him to apportion the Grant amongst the persons, with whom he is associated, in such manner, as shall appear to him to be proper, he being the only person, whose name will be officially introduced in the transaction, and consequently the party to whom the local Authorities will look for the fulfilment of the usual conditions of the Grant.

Land grants
to absentee
proprietors.

That you may not suppose, from what I have above stated, that Lord Goderich disapproves altogether of the principle, which has been adopted, and, with reference to which, Grants have been already made to Mr. Macqueen, Mr. Hart Davis, and Sir Thomas Brisbane, his Lordship thinks it right to observe that, in cases similar to those to which I have adverted, the cultivation of

Grants by proper Agents may be productive of great benefit to the Colony by the additional funds, which it may be the means of introducing into it; but, in the instances, in which Lands may be so granted, care will of course be taken that the Grantees are Capitalists of the highest respectability; and the indulgence will then only be given upon the understanding that the persons, employed as their Agents, will be constantly resident on the property, and that the Proprietors will be held responsible for the Acts of their Representatives, as well as for the fulfilment of the conditions, which may have been affixed to such Grant.

1827.
6 July.
Land grants
to absentee
proprietors.

I have, &c.,

R. W. HAY.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 19, per ship John; acknowledged by Governor Darling, 4th December, 1827.)

Sir,

Downing Street, 7 July, 1827.

7 July.

I have received your dispatch, No. 3 of the 3rd of January, transmitting, in conformity with the Instructions, which had been conveyed to you on that subject, a Return of the Grants of Land made during the year 1826.

Despatch
acknowledged.

In approving of the course, which you have taken with reference to the applications for Grants, which had been addressed to you by persons, not in the situation of new Settlers, it is only necessary for me to observe that the Instructions, which were conveyed to you on the 2nd of April last, will enable you to direct a survey to be immediately commenced of the Lands, which those persons have been permitted in the mean time to occupy, on payment of a Rent, in order that such Lands may be now converted into Grants in favor of the Parties, for whose benefit this temporary expedient was adopted.

Applications
for additional
land grants.

I have, &c.,

GODERICH.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch marked "Private," per ship John; acknowledged by Governor Darling, 22nd December, 1827.)

My dear Sir,

Downing Street, 7 July, 1827.

I beg to acknowledge the receipt of your letter of the 16th of December. The Returns, which accompanied it, would have been very useful (in the absence of the other Information, which you propose to send home relative to the Expenses of your Government), had they been received a few weeks sooner; but unfortunately the time for preparing the Estimates had passed before your Letter arrived, and the Treasury were, therefore, obliged to go upon the more imperfect data which they already possessed.

Despatch
acknowledged.

1827.
7 July.

Government
farming
establishments
to be reduced.

By Lord Bathurst's Despatches of the 7th of Octobere and 12th of Decr., 1826, you will have been prepared for the receipt of Instructions at no distant period for the reduction of the farming Establishments, which have been kept up by the Colonial Governments at a very considerable Expence, and which (however necessary in the Infancy of the Colony, when the Government were almost entirely dependent upon their own resources for provisions, etc.), it is the opinion of the Secretary of State may now gradually be dispensed with, without any inconvenience. As, however, you have been called upon for a Report upon the subject of these farms generally, Lord Goderich has deemed it advisable to defer sending you any official Instructions, until after that report shall have arrived; but, observing by the Returns now sent home the actual extent of the expence attending these Establishments, he is of opinion that a reduction should at once commence to an extent of *at least* one half of their present number. It will readily occur to you (in addition to the saving of expence, which will accrue from it) that, by this measure, many Convicts will be set at liberty to be employed in the Service of the Settlers, when their Character and Conduct will admit of their being so assigned; whilst on the other hand the Settlers will be spared the mortification of finding a competition existing between them and the Government, by the produce of those farms operating against them in a manner highly detrimental to their Interests.

Disposal of
stock and lands.

The Stock, which may be on the farms in question, you will of course dispose of by public Auction; but as the Lands composing them are probably situated in parts of the Colony, which would render them of importance to the Government at some future period, besides being highly valuable at the present moment from their quality, improved as they must be by cultivation, Lord Goderich thinks it would be preferable to let them out on a fair Rent to Individuals, who may be disposed to occupy them upon those terms than to dispose of them altogether.

I remain, &c.,

R. W. HAY.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 20, per ship John.)

10 July.

Sir,

Downing Street, 10 July, 1827.

Division of
judicial
business
between judges.

I have received your dispatch, No. 97 of the 19th December, 1826, reporting the arrangement, which has been made for the division of the Judicial Business on the appointment of an additional Judge in New South Wales, by which it is proposed that the two Judges should sit successively on alternate days for

the dispatch of the ordinary Business of the Court, and should sit together for the decision of all questions of peculiar difficulty and importance. As so much public advantage will result from the Chief Justice being relieved from a portion of his arduous duties, His Majesty's Government are of opinion that it would be highly inexpedient to disturb the arrangement, which has been made for the division of the Judicial Business between the two Judges, who are the fittest persons to decide as to the nature of the Jurisdiction of the Court, over which they preside, and of the mode in which it can be lawfully exercised; and I have, therefore, to signify to you His Majesty's pleasure that, until some better plan of proceeding, which experience may suggest, shall be proposed, the arrangement in question may remain upon its present footing.

I have, &c.,

GODERICH.

1827.
10 July.

Division of
judicial
business
between judges.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 21, per ship Woodlark; acknowledged by Governor Darling, 31st January, 1828.)

Sir,

Downing Street, 10th July, 1827.

I have the honor to acknowledge the receipt of your dispatch, No. 4 of the 4th of January, inclosing a Memorial from Messrs. James and William McArthur, praying that they may receive a Grant of Land, which had been reserved for them by order of Sir Thomas Brisbane in Sept., 1824, consisting of 2,500 Acres each.

Land grants
for J. and W.
Macarthur.

Both of these Gentlemen appear to have received Grants, previously to the Reserves in question having been made in their favour, amounting to 1,150 Acres, in addition to which they have been permitted to purchase 4,000 Acres. Provided the Capital possessed by these Gentlemen shall appear to be equal to the cultivation of the reserves of Land, of which they have now applied for the confirmation, I see no objection to a compliance with their application; but you will be pleased to acquaint them that the Land in question can only be confirmed to them according to the existing Regulations.

I have, &c.,

GODERICH.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 22, per ship John.)

Sir,

Downing Street, 10 July, 1827.

I have had the honor to receive your dispatch, No. 6 of the 10th January last, submitting that Mr. Stephen's Salary, during the time he acted as Assistant Judge, may be made up to £1,500 a year, the Sum which he has been permitted to receive

Salary of
J. Stephen as
assistant judge.

1827.
10 July.

since he obtained the appointment of second Judge; and I beg to acquaint you, in reply, that I approve, under the circumstances which you have stated, of your having authorized the payment in question to be made to Mr. Stephen.

I have, &c.,

GODERICH.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 23, per ship John.)

Sir,

Downing Street, 10 July, 1827.

Appointments
of J. Holland.

I have received your dispatch, No. 7 of the 11 January last, on the subject of Mr. Holland's appointment as Commissioner of the Court of Requests.

The above mentioned appointment, as well as that of Solicitor General, was originally intended to be conferred upon that Gentleman, and he was subsequently directed to be placed in the situation of Clerk of the Council, solely on account of the arrangement which you had adopted with respect to Dr. Douglas, and which, not having been known to the Secretary of State until after Mr. Holland had taken his departure, could not have been made known to him whilst he was in this Country.

Under these circumstances, I can have no objection to the arrangement with regard to the employment of those two Gentlemen reverting to what appears to have been the original intention respecting them.

The dispatch No. 25, to which you have adverted as not having arrived, contained the first communication that was made to you on the subject of Mr. Holland's Appointment. The delivery of it was entrusted to him; but, as it appears that he had the misfortune to sail from England without it, I now forward a Duplicate copy.*

Despatch
withheld.

The other dispatch, vizt. No. 27,* which you also state not to have received, related to Mr. Bannister, the Attorney General; but, the Instructions which it contained having been deemed unnecessary by the determination of that Officer to relinquish his Situation, it was purposely withheld.

I have, &c.,

GODERICH.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 24, per ship John.)

Sir,

Downing Street, 11 July, 1827.

11 July.

Repudiation of
F. Shortt's
claim to land.

I have the honor to acknowledge the receipt of your dispatch, No. 9 of the 26 January, together with the Memorial enclosed from Mr. Shortt, respecting some Land which he represents he is likely to be unjustly deprived of at the instance of the

* Note 7.

Australian Agricultural Company; and I request that you will acquaint the party interested in the decision of this case that His Majesty's Government do not consider that there are any just grounds of complaint against the local Authorities for resuming the Land in question, it appearing that the original occupation of it was granted subject to the condition that it should be resumed hereafter, if required, and that, at the time when the Government thought proper to reclaim it, no improvements had been made nor any stock placed upon it. Neither can the Party have any claim upon the Agricultural Company, as it was with the express object of anticipating any obstacles, which might occur to interfere with the selection of the Company's Lands in this quarter, that the conditions annexed to Mr. Shortt's Grant appear to have originated.

1827.
11 July.
Repudiation of
F. Shortt's
claim to land.

As you have not made any observations in your dispatch with respect to the cases of Captains Cromarty and Moon, alluded to in Mr. Shortt's Memorial, the claims of these Persons must form a separate consideration, and should, if they consider that they have any cause of complaint on grounds distinct from those, on which Mr. Shortt's claim is founded, be brought forward in a Memorial addressed to His Majesty's Government from themselves.

Claims of
Cromarty and
Moon to land.

I have, &c.,

GODERICH.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 25, per ship John.)

Sir,

Downing Street, 11 July, 1827.

I received your dispatches addressed to my Predecessor of the dates and numbers mentioned in the Margin,* relating to the cases of two Soldiers, named Sudds and Thompson, who, having been convicted of public Robberies and of maiming their own persons with the avowed intention of obtaining their discharge, were sentenced by the Supreme Court to transportation for seven years to a Penal Settlement, but whose sentences you had taken upon yourself to commute (with a view of exhibiting them to their comrades in the most degrading and humiliating light) for a Sentence of Hard Labour for the same length of time in the Chain Gang, after having gone through the ceremony of being stripped of their Uniforms in the presence of the Troops, dressed in Felon's Clothing, placed in Chains, and drummed out of the Regiment.

Conviction and
sentences of
J. Sudds and
P. Thompson.

The death of one of the Prisoners, a few days after his degradation and Punishment was carried into effect, appears to have

* *Marginal note.*—Sep'te, 4 Decr., 1826; Priv., do.; Separ'e, 12, do.; Sec. and Conf., 15 do.

1827.
11 July.
—
Effect of death
of J. Sudds.

Approval of
sentences.

Governor
innocent of
severity.

Legality of
alteration of
sentence by
governor.

given a complexion to this Affair, which, had it not been for that unfortunate circumstance, would in all probability have excited comparatively little attention. As it appears that no less than eight Soldiers had previously been detected in the commission of similar Offences for the purpose of thereby obtaining their discharge, it certainly was very desirable that every proper step should be taken to discourage the repetition of such proceeding, and the ignominious expulsion of these Men from their Regiment was, therefore, a perfectly proper and judicious measure.

But, as it does not appear that the commutation of the original sentence of the Prisoners subjected them to any greater length or severity of Labour than that to which the Sentence of the Supreme Court had rendered them liable, there is certainly no ground upon which you could be justly accused of having exercised any undue severity in this case, and still less with having inflicted this punishment at a time when the Man, who died, was labouring under such severe illness as "to be scarcely able to stand." There is nevertheless another question arising out of the proceedings, to which I must call your attention. I mean how far you were legally authorized by the Act, passed in the Legislative Council of the Colony, which enables the Governor "to withdraw any person, now or hereafter to be transported to any Penal Settlement," and to employ him in Irons on the public Roads, to change a Sentence pronounced by the Supreme Court, and to substitute another of at least equal severity; and whether a person, sentenced by the Colonial Courts to Transportation to a Penal Settlement, but not actually transported, is within the meaning of this Enactment.

With reference to this part of the subject, I have to observe that, altho' it is a matter of no surprize to His Majesty's Government that you should have considered the cases of the Soldiers, Sudds and Thompson, to come under the description of those contemplated by the Law above alluded to, yet I cannot but think that, until the transportation shall have been actually carried into effect, and until the Convict has reached the Penal Settlement, the Governor's power of withdrawing him cannot be lawfully exercised; and I am the more confirmed in this view of the subject, as the object of the Law appears to have been (by enabling the Governor to mitigate the Sentences of Persons transported to the Penal Settlements under the Judgment of the Supreme Court) to prevent such Convicts from being entirely deprived of the hope of earning a mitigation of their Punishment by their subsequent good conduct; but this interpretation of the Law, as you will immediately perceive, does not apply to the cases of the two Soldiers; for there was no intention of

mitigating their Sentences; they were not withdrawn from a Penal Settlement for good conduct, and were withheld from going there solely with the view that their Punishment might be rendered a more impressive example to their Comrades.

1827.
11 July.

Under these circumstances of doubt as to the legality of the commutation of Punishment, which you adopted, I see no other course to be taken in regard to "Thompson" than that he should be discharged from further Punishment; but, in setting him at liberty, he will of course be liable to be called upon to return to his Military duty, should you think it advisable to bring back to the Regiment a person, who had been capable of conducting himself in so disgraceful and unsoldierlike a manner.

P. Thompson
to be liberated.

I have, &c.,
GODERICH.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 26, per ship John; acknowledged by Governor Darling, 4th December, 1827.)

Sir, Downing Street, 11 July, 1827.

I have the honor to acknowledge the receipt of your despatch, No. 10 of the 27 January last, transmitting a Memorial from Mr. Crawford, late Chief Clerk in the Colonial Secretary's Office, on the subject of his retirement from that Situation; and I have to desire that you will cause Mr. Crawford to be informed that the arrangements, which were carried into effect with respect to the reorganization of the Department to which he was attached, having been approved by His Majesty's Government, I have considered it my duty to confirm the acceptance of Mr. Crawford's Resignation, which you had already signified to him.

Acceptance of
R. Crawford's
resignation
confirmed.

I have, &c.,
GODERICH.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship John; acknowledged by Governor Darling, 4th December, 1827.)

Sir, Downing Street, 11 July, 1827.

I have had the honor to receive and lay before Lord Viscount Goderich your letter of the 27th of January last, relative to Mr. Raymond, who appears to have completely misunderstood the footing upon which he was allowed to proceed to New South Wales.

Despatch
acknowledged.

This has been already explained to you in my letters of the 5th October, 1826, and the 5th April, 1827; and it is now, therefore, only necessary to observe that, as it is quite impossible that

1827.
11 July.

Instructions
re future
treatment of
J. Raymond.

the Colonial Government should be saddled with the expense of maintaining him and his family (and it appears that Mr. Raymond's ideas of a suitable maintenance are far beyond his merits), there will be no other alternative than to remove him to a subordinate Situation, if he should be found to be unfit for the performance of the duties of that which you have already conferred upon him, the Secretary of State never having contemplated the providing him with any other appointment than his qualifications suited him for.

I have only further to transmit to you copies of the correspondence which originally passed relative to Mr. Raymond's case, by which you will perceive how entirely he has mistaken the Intentions of Government with respect to him.

I have, &c.,
R. W. HAY.

[Enclosure.]

Correspondence
in case of
J. Raymond.

COPIES OF CORRESPONDENCE RESPECTING MR. RAYMOND.

*The Rt. Honble. H. Goulburn to Mr. Wilmot Horton,
8th April, 1824.*

THE Bearer of this, Mr. John Raymond, is anxious to go to New South Wales as a Settler; he is strongly recommended to me as a deserving man, and by assisting him you will oblige both him, and

Yours truly,
H. GOULBURN.

*The Rt. Honble. H. Goulburn to the Earl Bathurst,
8 July, 1824.*

[A copy of this letter will be found on page 60, volume XII.]

Earl Bathurst to the Rt. Honble. H. Goulburn, 16th July, 1824.

I HAVE had the honor of receiving your Letter, dated the 8th Instant, submitting the case of Mr. Raymond, who is proceeding to New South Wales, and stating the grounds on which the Lord Lieutenant is induced to hope that a free Passage will be afforded to that Gentleman and his family; in reply to which, I beg to acquaint you that the Government have long since discontinued the practice of granting free Passages to persons proceeding as Settlers to that Colony; but, under the circumstances of Mr. Raymond's case, I have no hesitation in granting to him that Indulgence.

The Rt. Honble. V. Fitzgerald to Mr. W. Horton, 30 June, 1825.

I UNDERSTAND that the case of Mr. Raymond has been referred to your Department. I can certify that he has suffered most serious losses during the disturbances in the County of Limerick.

He and his family were objects of Vengeance to the Insurgents on account of his activity in support of the Laws. He is of a very respectable family and good fortune; but is now with a large family reduced to the severest distress. If I have any influence, I would certainly be disposed to exert it for this poor Gentleman; as it is, I offer my testimonials.

1827.
11 July.

Correspondence
in case of
J. Raymond.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 27, per ship John.)

Sir, Downing Street, 12 July, 1827.

12 July.

I have received your dispatch, No. 11 of the 31 January last, transmitting a Petition, addressed to His Majesty, which had been agreed upon at a public Meeting assembled for that purpose, the prayer of which is to obtain the Privileges of "Trial by Jury" and an "Elective Assembly invested with the like Faculties that belong to the Legislative Assemblies in all the rest of His Majesty's British Plantations"; and I do myself the honor of acquainting you that I have taken the first opportunity of laying the same before His Majesty.

Acknowledgment of petition for trial by jury and elective assembly.

I have, &c.,

GODERICH.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 28, per ship John; acknowledged by Governor Darling, 15th December, 1827.)

Sir, Downing Street, 12 July, 1827.

Observing, by the account given in the Sydney Gazette* of the Meeting, which was convened for the purpose of petitioning His Majesty to extend to the Inhabitants of New South Wales the benefits of Trial by Jury and a House of Assembly, that Dr. Douglas took a very prominent part on the occasion by supporting the Prayer of the Petition, I deem it necessary (although you have not brought his conduct under my notice) that he should be made acquainted with the Sentiments entertained by His Majesty's Government with respect to this highly improper and extraordinary proceeding.

Adverse criticism of H. G. Douglass.

The confidential Situation held by Dr. Douglas should, it was natural to suppose, have induced him to keep aloof from joining in the discussion of such matters, as were submitted to the consideration of the Meeting; and it was highly disrespectful to the Council, whose Clerk Dr. Douglas is, that he should have sanctioned, not only by his presence, but by taking a share in the proceedings of the day, the sort of language in which that Body was spoken of upon that occasion. You will, therefore, caution Dr. Douglas, so long as he holds any employment under

* Note 103.

1827.
12 July.

H. G. Douglass
to be cautioned.

the Colonial Government, against mixing himself up with any similar measure in future, as a repetition of the same line of proceeding will subject his conduct to more especial notice than His Majesty's Government are now willing to take of it, under the impression that he may not have been aware at the time of the impropriety of the course which he was pursuing.

I have, &c.,
GODERICH.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 29, per ship John.)

13 July.

Refusal of
land grant
and financial
assistance for
L. H. Halloran.

Sir,

Downing Street, 13 July, 1827.

I have had the honor to receive your despatch, No. 14 of the 3rd February last, accompanied by a Memorial from Dr. Halloran, the object of whose application is to obtain a Grant of 640 Acres of Land reserved for him by Sir Thomas Brisbane, and to receive the assistance of Government in establishing a free Grammar School for the education of the Youth belonging to the Colony of New South Wales.

With respect to the Grant of Land, which Dr. Halloran solicits, I should have felt no objection in complying with his application, had he appeared to be in a situation to perform all the conditions of cultivation prescribed by the late Regulations, and provided his Character should have been such as to render him deserving of this indulgence; but, as the pecuniary embarrassments, under which he is represented to labour, hold out little prospect of his being able to comply with those Conditions, I do not feel at liberty to authorize in his case what I should not think it proper should be done in the case of a Settler, newly arrived in the Colony not provided with better means.

Upon the same grounds, as well as under the peculiar circumstances attending Dr. Halloran, I do not consider it would be advisable to grant public Money for the purpose of enabling him to set up and superintend an Establishment of the nature of that, to which he alludes in his Memorial.

I have, &c.,
GODERICH.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch marked "Private," per ship John; acknowledged by Governor Darling, 4th December, 1827.)

My dear Sir,

Downing Street, 13 July, 1827.

Resignation of
R. Crawford.

Lord Goderich's official Dispatch on the subject of Mr. Crawford will render very few observations necessary for me to offer in reply to your private Letter of the 3d of February, and

those merely to state that you did quite right in accepting his Resignation, as he does not appear to be a person, whom it was desirable to retain in the public Service. I remain, &c.,

1827.
13 July.

R. W. HAY.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 30, per ship John.)

Sir,

Downing Street, 14 July, 1827.

14 July.

I have received and have laid before The King your dispatch, dated the 8th February last, with which you have transmitted to me an Instrument of Pardon in favor of Israel Chapman for His Majesty's Approbation and Allowance, in conformity with the Statute made in the 4th year of His Reign, Cap. 96, Sec. 35; and I have received His Majesty's Commands to signify to you that, in pursuance of the before mentioned Statute, and in exercise of the Authority thereby vested in Him, His Majesty is graciously pleased to approve and allow the said Pardon, and that the same is approved and allowed accordingly.

Approval of
pardon for
I. Chapman.

I have, &c.,

GODERICH.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch marked "Private," per ship John; acknowledged by Governor Darling, 4th December, 1827.)

Dear Sir,

Downing Street, 14 July, 1827.

Mr. Holland having written to us a long account of his Grievances, I have thought it right to send you Copies of his Letter and of our reply.

Statement of
grievances from
J. Holland.

Yours very truly,

R. W. HAY.

[Enclosure No. 1.]

[*This was a copy of the letter enclosed in Governor Darling's despatch, dated 26th March, 1827; see page 195.*]

[Enclosure No. 2.]

UNDER SECRETARY HAY TO MR. J. HOLLAND.

Sir,

Downing Street, 14 July, 1827.

I have received and laid before Lord Viscount Goderich your letter of the 10th February, stating the difficulties to which you were exposed on your arrival at New South Wales in consequence of the Governor having received no official Intimation on the subject of the appointment, which you had proceeded to that Colony to fill, adding that, although the Governor had consented to your being Gazetted, the Chief Justice had refused to swear you in as Solicitor General.

Acknowledg-
ment of letter
from
J. Holland.

1827.
14 July.

Despatch
entrusted to
J. Holland.

Salary as
commissioner of
court of
request.

Separation
of offices of
solicitor-
general and
commissioner
of court of
request.

Recommend-
ation of
Sullivan as
military
settler.

Lord Goderich regrets the inconvenience, which you have experienced by the circumstances above mentioned; but, as it has entirely resulted from your having omitted to take with you the dispatch, which, instead of being forwarded to the Governor in the usual manner, was, at your particular request, delivered to you for that purpose, his Lordship must consider that you have brought yourself into the unpleasant predicament in which you were placed.

As it does not appear that the Governor has declined issuing to you the amount of Salary, which it was stipulated on your departure from England that you should receive as Commissioner of the Courts of Request, Lord Goderich is at a loss to discover what is the particular point with reference to that subject, which you are desirous of pressing upon his attention, or wherefore you should deem it necessary to enter upon a statement of the Emoluments received by Persons, holding other Offices, which can have nothing to do with your particular case.

Lord Goderich desires me to take this opportunity of acquainting you that, as it is deemed necessary to separate the two Offices of Commissioner of the Courts of Request and Solicitor General, you will be relieved from the necessity of undertaking the duties of the latter Situation; but, although the effect of this arrangement will be to diminish much of the labor and responsibility, which would otherwise have devolved upon you, yet that it is not intended to reduce the Emoluments, which will belong to you as Commissioner of the Courts of Request, which will continue to be issued to you at the rate at which they were originally fixed.

I am, &c.,

R. W. HAY.

UNDER SECRETARY HAY TO GOVERNOR DARLING.
(Despatch per ship Hoogley.)

My dear Sir,

Downing Street, 14th July, 1827.

Lord Goderich has desired me to transmit to you the Copy of a letter, which he has received from the Right Honble. John Sullivan in behalf of a nephew of his, Major Sullivan, who has determined to proceed to New South Wales with his family, under the terms* held out to Military Men to establish themselves there, and in so doing it is unnecessary for me to say anything further in his favor, as the character, given of him by his Uncle, will, Lord Goderich is confident, secure at your hands every kindness that circumstances may enable you to shew him.

I am, &c.,

R. W. HAY

[Enclosure.]

[A copy of this letter is not available.]

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 31, per ship John; acknowledged by Governor Darling, 14th December, 1827.)

1827.
16 July.

Sir,

Downing Street, 16 July, 1827.

I deem it expedient to call your attention to the conduct of Mr. Mackaness (as collected from the account given of his proceedings in the Colonial Newspaper*) on the occasion of the public Meeting, which was held at Sydney on the 26th January last for the purpose of petitioning His Majesty and both Houses of Parliament, that the benefits of Trial by Jury and Taxation by Representation may be extended to New South Wales.

Disapproval
of conduct of
J. Mackaness at
public meeting.

In the discharge of his public duty as Sheriff, Mr. Mackaness had perhaps no choice with respect to his attendance upon the meeting, which he had himself convoked at the requisition of the Inhabitants; but I observe with much regret that he did not confine himself to merely presiding on that occasion, but gave his marked countenance to the proceedings of the day, in the course of which it would appear that the existing Institutions of New South Wales and the constituted Authorities of the Colony underwent the most severe animadversions. Under these circumstances, I am anxious to ascertain whether any part of Mr. Mackaness' conduct, in his official capacity, calls in your opinion for any more pointed mark of disapprobation than you are hereby authorized to convey to him.

In that case (as such proceedings on the part of public Officers cannot fail to create very great inconvenience) it may become necessary for you to intimate to Mr. Mackaness that he will not be reappointed Sheriff at the close of the present year. I am willing, however, to hope that a general caution from you (if you think it necessary to take any further notice of this matter) will have the effect of preventing any more embarrassment.

I have, &c.,

GODERICH.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch marked "Private," per ship John; acknowledged by Governor Darling, 30th August, 1828.)

My dear Sir,

Downing Street, 17 July, 1827.

17 July.

Knowing your anxiety to receive the earliest Intelligence as to our proceedings with respect to new appointments, I beg to state that Lord Goderich has determined to appoint a third Judge (to rank next to Mr. Forbes), and that Mr. Dowling,† the Gentleman who is to be appointed, proceeds to the Colony, the moment he can make his arrangements for that purpose.

Appointment of
J. Dowling
as judge.

* Note 103. † Note 105.

1827.
17 July.

Alterations
in legal
appointments.

The Correspondence with Mr. Holland, of which I have forwarded to you Copies, will acquaint you with our Intentions respecting the Office of Solicitor General; but we have not been able, as yet to fix upon a proper person to undertake the duties of that Situation.

It occurs to Lord Goderich that the last mentioned Appointment, as well indeed as the other legal Arrangements, which have taken place since the two Crown Solicitors, Messrs. Moore and Garling, received their Appointments, may render it possible to dispense altogether with the two latter Situations. But, before Lord Goderich directs this reduction to be made, he is anxious to know your Sentiments on the subject, with which he requests that you will favour him by the earliest opportunity.

I remain, &c.,

R. W. HAY.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch marked "Private," per ship John; acknowledged by Governor Darling, 4th December, 1827.)

My dear Sir,

Downing Street, 17th July, 1827.

I lost no time, on the receipt of your letter of the 8th of February last, in communicating to the Horse Guards the very unfavourable account, which you had given of the Men of the Veteran Companies, conceiving as you have done that great inattention, if not negligence, must have occurred on the part of those Officers, who were intrusted with the selection of them; but you will perceive, by the enclosed Letter from Sir Herbert Taylor, that their bad habits must have been contracted subsequently to their leaving this Country, as particular attention appears to have been paid to the Characters of the persons, who were engaged for this service, all of whom had previously produced written Testimonials as to their general good Conduct.

I am, &c.,

R. W. HAY.

[Enclosure.]

SIR HERBERT TAYLOR TO UNDER SECRETARY HAY.

My dear Hay,

Horseguards, 2 July, 1827.

I have learnt with much concern, from your Letter of the 27 of June and Lt. Genl. Darling's enclosed, that the Veteran Companies, formed for service in New South Wales, have turned out so ill and have so much disappointed our expectations. You are well aware of the Instructions, which were given for the Selection of Men, not only efficient and fit for Service, but of good character and sober habits; that Sir Archibald Christie was

Reply to
criticism
of veteran
companies by
R. Darling.

Instructions
for formation
of veteran
companies.

directed to secure the service of Men, who had been discharged as Non Commissioned Officers, or from the Country and Guards; and that on this Principle the Superior Cavalry Pay was given to them; that ample time was allowed for collecting them; and that officers were appointed to receive them, one of whom, Captain Robinson, was charged with the details and assisted in the Selection of what were considered proper Men.

1827.
17 July.
Instructions
for formation
of veteran
companies.

Sir Archibald Christie assured me that all this had been strictly attended to; and I have seen him, since the Receipt of your letter, when he repeated that assurance and stated that, as soon as he returned to Chatham, he would send me a written Statement, accompanied by the written Character produced by the majority of the Men.

Reply to
R. Darling's
criticism.

It appears very extraordinary, under these Circumstances, that these Men should so early have manifested a spirit of Insubordination, and habits, so disorderly and irregular; and it is impossible that Captain Robinson and the other Officers should have attempted to establish any System of Discipline, have daily exerted themselves, or have paid the necessary Attention to the Men under their Charge.

I must be permitted to add that it appears almost equally extraordinary that, after the Report made by Captain Robinson of the Conduct of these Men on their Passage, and the Opinion which Lieut. Genl. Darling appears to have formed of their general Character, the latter should not have embodied them, and taken Steps to establish a proper System of Discipline and subordination and more regular habits, and to ascertain whether any and what proportion could be trusted, before he attached them to Establishments and detached them in very small Parties to act as Police. He observes further that he quite despairs of turning them, even as a Body, to any useful Purpose, as they are such incorrigible Drunkards that they cannot be depended on. I really cannot understand this, from any experience we have had of Pensioners, *indiscriminately* embodied for Service in this Country and Island, and whose general conduct has given satisfaction.

Lieut. Genl. Darling proposes that Men should be transferred from the Regiments of the Line in New S. Wales; but I submit that there are various Objections to this Arrangement. The Regiments are not permanently stationed in New South Wales, but are to be progressively sent to India; and, if Men are transferred from thence, their effective state will be reduced, and they will proceed to their ulterior destination deficient in numbers, while it will be impossible to make Arrangements for supplying the deficiency, of which the Extent is not known.

Objections to
transfer of
military to
veteran
companies.

1827.
17 July.

Objections to
transfer of
military to
veteran
companies.

If the Selection is left to Genl. Darling, he will naturally take the best Men, and the Regiment will suffer in proportion. If left to the Commanding Officer, they will get rid of the worst Men, and they will not suit the Duties which it is intended to intrust to them.

As soon as I receive Sir A. Christie's Statement, I will send it to you.

Believe me, &c.,

H. TAYLOR.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch marked "Private," per ship John.)

18 July.

Approval of
exclusion of
females from
Norfolk Island.

My dear Sir,

Downing Street, 18th July, 1827.

I have submitted to Lord Goderich the question, proposed in your private Letter of the 16th of February last,* respecting Norfolk Island, and the system which it may be proper to pursue with regard to that place; and I am desired by him to acquaint you that his Impression is in favour of the line already taken by you on this subject. One of the privations endured in this Country in the Hulks and Penitentiary (as well as in the common Prisons, where men are usually confined for shorter periods) is the same as that to which the Convicts at Norfolk Island are subject; and even if he doubted, more than he sees reason to doubt, the propriety of the first determination, he would dread the consequences of sending a few females to Norfolk Island.

I remain, &c.,

R. W. HAY.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 32, per ship John; acknowledged by Governor Darling, 24th December, 1827.)

19 July.

Despatch
acknowledged.

Sir,

Downing Street, 19 July, 1827.

I have the honour to acknowledge the receipt of your Dispatch of the 4th of February last, inclosing the Report of the Officers, who were employed in execution of the Instructions conveyed to you by the late Secretary of State with the view of establishing a Settlement at Western Port.

Instructions re
settlement at
Western port.

Although the result of the examination, which has been made of the Western Coast† of New Holland, has not realized the expectations of His Majesty's Government, yet I am satisfied of the propriety of an investigation having been undertaken of a part of the Country, which was so imperfectly known; but as it appears to possess none of those advantages which would render it susceptible of Colonization, and the situation is still less favorable for the purposes of a Penal Settlement, you will consider yourself authorized to withdraw the persons whom you have

* Note 106. † Note 107.

sent to that place to make preparatory Arrangements for those objects, should the subsequent Report, which you may receive from Mr. Howell,* who has been left there in charge of the Establishment, be not more favorable in respect to the interior of the Country than that which has been made by Captain Wetherall in regard to the Soil in the immediate vicinity of the Coast.

I did not fail to bring under the consideration of His Royal Highness The Lord High Admiral your recommendation in favour of Captain Wetherall, whose Interests with respect to promotion you were afraid would suffer by his absence on the above Service; but it appears that this Officer had obtained the Step of Rank, which he was under apprehension of losing, many months before your dispatch was received.

1827.
19 July.

Promotion of
F. A. Wetherall.

I have, &c.,
GODERICH.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 33, per ship John.)

Sir,

Downing Street, 19 July, 1827.

A question having arisen how far Officers on Foreign Half pay, not being British Born Subjects, could avail themselves of the General Order† of His Majesty of the 8th June, 1826, I have deemed it necessary to obtain a competent legal opinion with reference to this point; and it appearing that such persons cannot hold lands in New South Wales, because they are, in point of Law, Aliens, notwithstanding their enlistment into the British Army during the last War and their having held Commissions in His Majesty's Forces, I have to desire that you will bring under the consideration of the Legislative Council the propriety of enacting a general Law, whereby the Governor may be enabled to grant Letters of Denization‡ to such Foreigners, as may arrive in the Colony with a recommendation to that effect from the Secretary of State.

Legal
disabilities of
alien foreign
officers.

Proposed issue
by governor
of letters of
denization.

If the Governor is armed with this power, and if it be understood that in the cases referred to the letters will be granted, Foreign Officers or Men, going from home with recommendations from the Secretary of State, will go with the certainty of obtaining Grants of Land; whereas, if the obtaining of the Grant was to be made contingent upon an Act of the Legislative Council, to be done after the Individuals shall have arrived in the Colony, he might ultimately not obtain the necessary Documents, and consequently find his expectations disappointed. It is clear that, under such circumstances, very few Foreigners

* Note 108.

† Note 104.

‡ Note 109.

1827.
19 July.
Proposed issue
by governor
of letters of
denization.

would be induced to go out for the purpose of settling in those Colonies; and I, therefore, think it more advisable that the Governor should be invested with the general power of granting these Letters of Denization than that the Legislative Council should be called upon in every successive case to confer that Privilege.

I have, &c.,

GODERICH.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 34, per ship Woodlark; acknowledged by Governor Darling, 31st January, 1828.)

20 July.
Error in
recording
sentence of
transportation
on P. Hughes.

Sir,

Downing Street, 20th July, 1827.

I transmit to you herewith the Copy of a letter, addressed to my Under Secretary by direction of the Marquis of Lansdowne, together with Copies of the papers therein referred to, relative to the case of Philem Hughes, a Convict in New South Wales, who appears to have been sentenced to transportation for seven years only, but whose term was erroneously inserted in the Warrant as being for life. Under these circumstances, I am to desire that you will immediately restore the Prisoner to his freedom; and, as he has in consequence of the error, which has thus unfortunately occurred, been subjected to a restraint in his liberty for a period of nearly five years beyond the period, which his Sentence contemplated, you will, in case the prisoner should be desirous of returning to this Country, furnish him with the means of defraying his Passage, the expense attending which must be paid by the Treasury at home.

I have, &c.,

GODERICH.

[Enclosure No. 1.]

MR. T. SPRING RICE TO UNDER SECRETARY HAY.

Sir,

Whitehall, 18 July, 1827.

Correspondence
and papers
in case of
P. Hughes.

I am directed by The Marquess of Lansdowne to transmit to you the enclosed Copy of a Letter, which has been received from Mr. Gregory, together with its enclosures relative to the Sentence of Transportation passed upon Phelim Hughes, a Convict in New South Wales; and I am to desire that you will lay the same before Lord Goderich, and move his Lordship to be pleased to take an early opportunity of notifying to the Governor of New South Wales the error, which appears to have taken place in Ireland, in Order that the same may be Corrected and the Prisoner, if he thinks fit, be allowed a passage home free of Expense.

I am, &c.,

T. SPRING RICE.

[Sub-enclosure No. 1.]

P. HUGHES TO MR. W. GREGORY.*

1827.
20 July.Correspondence
and papers
in case of
P. Hughes.

Sir, Newcastle, New South Wales, 19th January, 1827.

I am sure the predicament, in which I am placed, will be accepted as an apology for the liberty I presume to take in writing you; and I most humbly and respectfully entreat your assistance in releasing me from a state of unjust exile and disgraceful bondage. I was tried at Longford in the County Longford in the Month of July, 1815, on suspicion of having received a stolen watch, and, being found guilty, received the Sentence of Seven Years Transportation; at the expiration of which period I applied for my Certificate of Freedom, and received for answer that my term of Transportation was *Life*; as I well knew and am confident that this statement is altogether inaccurate, I explained the circumstance to the authorities in this Colony, but have not had the least lenity, but on the contrary increased severity has been practised towards me, and no steps have been taken to disentangle me from this unmerited persecution. Justice is all I crave, and I beseech you as an English Subject, as a Man, and as a Christian, to come forward in the cause of humanity and investigate the business. I am too well aware of the goodness of your heart for one moment to doubt your kind and philanthropic interference; it is most certainly the cause of every Briton.

I beg most respectfully to submit that I was tried by Judge Fletcher, and, by searching the Records, I am convinced my Statement will be found correct; for nearly 5 years, I have been unjustly treated as a Convict, and, although I have indeed suffered severely for an inadvertent offence, Still Hon'd Sir, I would scorn to Shrink from Justice by the Mask of a lie. I disdain it. The time allowed for the expiation of my crime is long since expired. Surely, Sir, I need not state more; again most respectfully and earnestly I request you will make the necessary inquiries, and direct that proper Steps may be resorted to for my release; and permit me to subscribe myself

Hon'd Sir, Your, &c.,

PHELM HUGHES.

[Enclosure No. 2.]

MR. W. GREGORY TO UNDER SECRETARY HOBHOUSE.

Sir, Dublin Castle, — July, 1827.

I send you herewith the copy of a letter from Phelim Hughes, a convict in New South Wales, respecting the term of his transportation, and also enclose the copy of the certificate of the Clerk of the Crown of the County of Longford, by which it appears that the said Phelim Hughes, on the 10th day of July,

* Note 110.

1827.
20 July.

Correspondence
and papers
in case of
P. Hughes.

1815, was sentenced to be transported for seven years instead of for Life, which latter term, it appears by the Convict's letter, was that inserted in the Warrant in the hands of the Governor of New South Wales.

In making this communication, I think it right to observe that the error arose with the then Inspector General of Prisons, whose Duty it was to make a return of the sentence of each prisoner, as given to him by the Clerks of the Crown, and from the return of the Inspector the Warrant, transferring the services of the Convict to the Governor of New South Wales, was prepared.

And I am to signify the Lord Lieutenant's desire that you will submit the circumstances of this case for the consideration of Mr. Secretary Sturges Bourne, in order that the Governor of New South Wales may be informed that Phelim Hughes was sentenced to seven years Transportation and not for life, and that he may be allowed a passage home free of expence.

I am further directed by His Excellency to observe that orders have been given to prevent the recurrence of similar mistakes.

I am, &c.,
W. GREGORY.

[Sub-enclosure No. 2.]

MR. T. GIBBS TO MR. W. GREGORY.

Sir, 39 York Street, 30 June, 1827.

I have the honor to transmit to you a Certificate of the conviction and sentence of Philip Hughes at the Summer Assizes, 1815, for the County of Longford, for stealing a Watch, desired by your Letter of the 28th Inst.

It appears from the Crown Book that he was indicted under the name of Philip Hughes; your Letter mentions his name to be Phelim Hughes.

I have, &c.,
THOMAS GIBBS.

[Sub-enclosure No. 3.]

CERTIFICATE OF SENTENCE ON P. HUGHES.

COUNTY OF LONGFORD
TO WIT.

Search being made amongst the pleas of the Crown for the County of Longford, I find that, at a General Assizes and General Gaol Delivery, held at Longford the 10th Day of July, 1815, Philip Hughes was in lawful manner indicted, tried and found guilty of feloniously stealing a Silver Watch, the property of one James Kelly; Whereupon the Court sentenced him to be Transported for Seven Years.

All which I certify this 30th day of June, 1827.

THOS. GIBBS, Dy. Clerk Cn.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Florentia; acknowledged by Governor Darling,
31st January, 1828.)

1827.
20 July.

Sir, Downing Street, 20th July, 1827.

I am directed by Lord Viscount Goderich to transmit to you for your information the inclosed Copy of a letter from the Secretary to the Treasury, relative to sending Articles of Clothing which you have requested might be sent out to New South Wales for the use of the Body Guard.

Requisition
for clothing
for governor's
bodyguard.

I am, &c.,
R. W. HAY.

[Enclosure No. 1.]

MR. J. HERRIES TO UNDER SECRETARY HAY.

Sir, Treasury Chambers, 18th July, 1827.

I am commanded by the Lords Commissioners of His Majesty's Treasury to transmit to you copy of a letter from the Secretary to the Ordnance, dated 4th Inst't, on the subject of the requisition for Clothing for the Service at New South Wales; and I am to request that you will move Viscount Goderich to cause it to be notified to the Governor of that Colony that the Clothing in question is calculated to last two years.

I am, &c.,
J. C. HERRIES.

[Enclosure No. 2.]

MR. R. BYHAM TO MR. W. HILL.

Sir, Office of Ordnance, 4 July, 1827.

With reference to the Requisition for Stores for Service at New South Wales in the year 1827, transmitted in your letter of the 31st March last,

I have The Board's Commauds to observe to you that the Clothing for the Governor's Body Guard is stated to be for one Year only; but that the Articles are precisely similar in quality to the Clothing for the Regular Cavalry, which is calculated to last two years.

I have, &c.,
R. BYHAM.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Woodlark; acknowledged by Governor Darling,
31st January, 1828.)

Sir, Downing Street, 20th July, 1827.

I am directed by Lord Viscount Goderich to transmit to you the inclosed letter from a Gentleman of the name of Hooke, who is proceeding as a Settler to New South Wales with a Capital, invested in Saxon and Merino Sheep, Horses, etc., to a

Transmission
of papers re
J. Hooke.

1827.
20 July.

considerable amount. And I beg, at the same time, to transmit to you a Copy of the reply, which his Lordship has directed me to return to Mr. Hooke's Application.

I am, &c.,
R. W. HAY.

[Enclosure No. 1.]

MR. J. HOOKE TO VISCOUNT GODERICH.

Application
from J. Hooke
for special
land grant.

My Lord, No. 1 Prospect Place, Mile End, 16 July, 1827.
Being about to proceed to Sydney, N. S. Wales, as a Settler with my Wife and six Children, and understanding that the Land is given in proportion to the means of the Person, but that the Governor has not power to grant more land than where it is considered £2,000 would keep in cultivation, I beg to lay before you some account of myself and property. I have always been accustomed to agricultural pursuits, and have lived latterly on my own Estate, which I have sold and have invested the proceeds in Saxon and Merino Sheep, Horses, etc., etc., the particulars of which I give with their value at foot, and trust that, in consideration of the amount of the investment, the whole of which is intended finally to be applied to the purposes of agriculture and breeding of Stock, and the largeness of my family, you will make me a special grant according to the means, which you perceive I possess.

I have, &c.,
JOHN HOOKE.

Property in
possession of
J. Hooke.

[Sub-enclosure No. 1.]

	£	s.	d.
Ship	2,000	0	0
Sheep 230 Merino and Saxon	690	0	0
Entire Blood Horse	500	0	0
Three fine Mares	300	0	0
Durham Cow with Calf	40	0	0
Assorted articles of Merchandize	1,295	0	0
Wine, Spirits and Beer	1,222	0	0
Furniture	119	0	0
Jewelry	40	0	0
Guns and Pistols	25	0	0
Carriage and Harness	150	0	0
Paintings	300	0	0
Iron for Merchandize	222	0	0
Clothing for Self and Family	400	0	0
	7,303	0	0
In Cash ..	1,300	0	0
	£8,603	0	0

Testimonial
in favour of
J. Hooke.

[Sub-enclosure No. 2.]

MESSRS. YOUNG AND THORNBULL TO VISCOUNT GODERICH.

No. 8 Hart St., Mark Lane,
London, 16 July, 1827.

My Lord,
We are requested by Mr. Jno. Hooke, who is about to proceed to Sydney, to inform you of the amount of his property and to speak to his respectability.

From our own knowledge, we are able to state that the Vessel, in which he is going, and Cargo, which consists of Sheep, Horses, and Merchandise, are his own property, and that the value of them is about £7,000, independant of which he purposes taking about £2,000 in Specie.

1827.
20 July.
Testimonial
in favour of
J. Hooke.

Mr. Hooke and his connections are all people of respectability and property.

We have, &c.,

YOUNG AND THORNBULL.

[Enclosure No. 2.]

UNDER SECRETARY HAY TO MR. J. HOOKE.

Sir,

Downing Street, 19 July, 1827.

I have received the directions of Lord Viscount Goderich to acquaint you, in reply to your letter of the 16th Instant, that the Governor of New South Wales will, on your arrival in the Colony, make to you a Grant of Land in proportion to your Capital and according to the terms contained in the accompanying Memorandum.* I am directed to add that the Governor will not fail to report to the Secretary of State on the subject, should he consider you deserving of a larger Grant than is usually given to a Settler or than he is already authorized to make by his Instructions; but his Lordship does not feel at liberty to direct any special Grant to be made to you until such Report shall have been received. At the same time, Lord Goderich will have no objection to forward a Copy of your application to the Governor of New South Wales, in order that he may be fully informed of your views, should you wish this step to be taken.

Refusal of
special
land grant.

I am, &c.,

R. W. HAY.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Woodlark.)

My dear Sir,

Downing Street, 20th July, 1827.

I am directed by Lord Viscount Goderich to bring under your favorable notice the name of Mr. Prout, who is understood to be at present employed in the Colonial Secretary's Office. Mr. Prout's family have applied in his behalf for a Grant of Land; but, as his claim to this Indulgence must depend upon the extent of his Capital, Lord Goderich does not think it right to say more upon this point than that he should be glad to meet Mr. Prout's wishes, so far as may not be inconsistent with the established Regulations.

Recommend-
ation of Prout.

I remain, &c.,

R. W. HAY.

* Note 111.

1827.
21 July.

GOVERNOR DARLING TO EARL BATHURST.
(Despatch No. 74, per barque Faith.)

My Lord,

Government House, 21st July, 1827.

Despatch
acknowledged.

I have the honor to transmit, in reference to your Lordship's Despatch No. 80/1826, the accompanying copy of a letter and of a private note from Mr. John Thomas Campbell, the only surviving Magistrate, who attended the Bench on the occasion alluded to in your Lordship's Dispatch.

Disagreement
of statements by
J. T. Campbell
and J. Cogill.

The statement, contained in Mr. Campbell's public letter, does not exactly accord with Mr. Cogill's deposition; but it will be observed that the former has no document to refer to, which could assist his memory, though the point is perfectly immaterial, as the persons stated by Mr. Cogill to have been in attendance for the purpose of giving testimony appear all to have belonged to the Ship, and their evidence was probably considered inadmissible from an idea of their being implicated in the transaction.

Death of D.
Wentworth.

The fact stated in Mr. Campbell's note is, however, satisfactory, as far as regards Mr. Cogill individually. I have been unable to pursue the matter further, Mr. D'Arcy Wentworth, who attended the Bench as Police Magistrate on the occasion, having been ill for some time past and died lately.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

MR. J. T. CAMPBELL TO COLONIAL SECRETARY MACLEAY.

Sir,

Sydney, 8th June, 1827.

Report by
J. T. Campbell
on case of
J. Cogill.

In answer to your letter of yesterday, calling upon me as a Magistrate to report to you on the circumstances of a case, which was heard before the Bench of Magistrates in Sydney in November, 1824;

I have the honor to inform you that, as I have only been a casual Member of the Bench, I am possessed of no records respecting the case which Captain Coghill has complained of in regard to Spirits which had been seized in the act of being smuggled from the Ship *Mangles* in November, 1824.

I am, therefore, obliged to report to you now solely from Memory, which, though not distinct in all the circumstances, will enable me to state with sufficient accuracy that the only Evidence offered on the part of Captain Coghill to disprove the charge was an Officer or Petty Officer of the Ship, and he one of the identical party concerned in the smuggling transaction. On this ground his evidence was not received. Captain Coghill called no other evidence.

I have, &c.,

J. T. CAMPBELL.

[Enclosure No. 2.]

1827.
21 July.

MR. J. T. CAMPBELL TO COLONIAL SECRETARY MACLEAY.

Dear Sir,

Sydney, 8th June, 1827.

In consequence of a suggestion from Mr. Oxley, who will hand you this in regard to the business of the ship *Mangles*, to which I had the honor of transmitting you my official answer this morning, I now beg to add that, in the course of the proceedings, there was not any ground for supposing that Captain Coghill was privy to the transaction, and I am certain that I did tell him so at that time.

Innocence of
J. Cogill of
smuggling.

I am, &c.,

J. T. CAMPBELL.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 75, per barque *Faith*; acknowledged by right hon. W. Huskisson, 24th January, 1828.)

My Lord,

Government House, 23rd July, 1827.

23 July.

I have the honor to state to your Lordship, in reference to the Dispatches just received, notifying the appointment of four Assistant Surveyors, that the exigencies of the Service had induced me to avail myself of the Assistance of Lieut. Bowen of the 39th Regiment, who, in consequence, sent Home an application some time since to retire on Half Pay. I, therefore, trust your Lordship will be pleased to confirm Mr. Bowen's appointment, with a salary of £250 a year, the same as the other Assistants now here, until your Lordship shall have determined, with respect to the increased pay recommended in the Report, lately transmitted with my Despatch No. 48/1827; and further, as Mr. Bowen is actually on the spot and has relinquished his Military Commission, that he may take precedence of the Assistant Surveyors recently appointed at Home. I beg to add that Mr. Bowen was educated at the Military College, is an officer of some standing and in every respect an acquisition to the local Government.

Appointment of
G. M. Bowen as
assist. surveyor.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 76, per barque *Faith*; acknowledged by right hon. W. Huskisson, 18th January, 1828.)

My Lord,

Government House, 24 July, 1827.

24 July.

I have the honor to acquaint your Lordship, in reference to my Dispatch No. 41/1826, that the Offices of the

Colonial Treasurer, Collector of Internal Revenue, and The Cash Branch (with the Military Chest) of the Commissariat

1827.
24 July.

Finance
departments
grouped in
one building.

Offices
for certain
departments.

Residence for
superintendent
of police.

Police office.

have been removed into the New Building in the Barrack Square. The whole of the money of the Government, Civil and Military, being kept in the above Offices, it appeared to me that its security would be more effectually provided for in a building within the Barrack Walls, than in Houses which it appeared could not be properly protected, The Commissariat, for example, notwithstanding every precaution having been repeatedly robbed.

2nd. I avail myself of this opportunity of further reporting to Your Lordship that I have appropriated a Public Building, which has hitherto been occupied as a Police Office and by the Superintendent of that Department, for the accommodation of the following Offices, viz.

Custom House; Colonial Audit; Land Board; and Military Account Department.

The House hitherto used as the Naval Office is in fact a complete ruin, and is totally unfit for the purpose of a Custom House. Besides the building, in which these last mentioned Offices are placed, is conveniently situated with respect to the Offices alluded to in Paragraph No. 1, which is an important accommodation in the transaction of public business.

3rd. The Superintendent of Police, who is entitled to a residence under your Lordship's Instructions, will occupy a House suited to his Station, which I found in possession of the Military, but which belongs to the Civil Government.

4th. I beg to add that I have appropriated a Building, intended as a "Market House," as a Police Office, for which purpose, from its construction and situation, it appeared particularly well calculated, and it is found to answer in every respect.

5th. I trust that these arrangements will be approved by your Lordship. The Expense of carrying them into effect has not exceeded what was necessary to complete the Building in the Barrack Square and the new Police Office, which I found in an unfinished state, and, if longer neglected, would have fallen to ruin.

I have, &c.,

RA. DARLING.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 35, per ship Woodlark; acknowledged by Governor Darling, 25th February, 1828.)

25 July.

Sir,

Downing Street, 25th July, 1827.

I have received your dispatch, No. 25 of the 15th of February last, submitting, for the reasons therein stated, that Colonel Morisset, who had been appointed by my Predecessor,

Commandant of Norfolk Island, would be more beneficially employed as "Inspector of the Penal Settlements" than if he were to be stationed at that place.

As, from the imperfect footing upon which the several penal Settlements are at present placed, an Officer of the nature of that, which you have proposed, certainly appears to be an useful one, and, as there is every reason for thinking Colonel Morisset is peculiarly qualified for improving the system, I approve of your availing yourself of the services of that Officer in the manner which you have proposed; but, as the duty which will be imposed upon him can only be of a temporary nature, I cannot sanction the retaining an Office of that description after the object in view has been accomplished. You will, therefore, on the first vacancy that may occur, provide him with a more permanent situation, should you still be of opinion that it would be expedient to defer carrying into effect the original Intention of my predecessor with respect to Colonel Morisset's Appointment.

1827.
25 July.

Temporary
appointment of
J. T. Morisset
as inspector
of penal
settlements.

As it is not improbable that Colonel Morisset may make application for the payment of his travelling expenses, when proceeding in execution of his duties as Superintendent to the different Penal Settlements, I think it necessary, in anticipation of such a claim, to acquaint you that, should you be of opinion that the expense to which he will be thereby exposed is such as to entitle him to this additional Remuneration, I am disposed to authorize an allowance to be made to him on this account, but not exceeding £100 pr. Annum.

Travelling
expenses.

I have, &c.,

GODERICH.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 36, per ship Woodlark; acknowledged by Governor Darling, 31st January, 1828.)

Sir,

Downing Street, 26 July, 1827.

26 July.

I have received your dispatch, No. 27 of the 17th of February last, in reply to the Instructions communicated to you by my Predecessor on the subject of the employment of a Confidential Clerk in the Office of the Colonial Treasurer.

Proposed
confidential
clerk to
colonial
treasurer.

At the time Mr. Balcombe made application through Sir Thomas Brisbane for this assistance, and when it was agreed to be given to him, the arrangements which you had made for the same object, namely to provide for the more efficient discharge of the duties of the Treasurer's Office, were unknown to His Majesty's Government; and you are, therefore, perfectly right in

1827.
26 July.

supposing that there is no disposition to sanction an appointment of this kind *in addition* to the increase of the Establishment, which you recommended soon after your arrival in the Colony, and of which the approval of his Majesty's Government was conveyed to you in Earl Bathurst's dispatch of the 14th of August, 1826.

I have, &c.,
GODERICH.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 37, per ship Woodlark; acknowledged by Governor Darling, 31st January, 1828.)

27 July.
Refusal to
send engineer
officers to
colony.

Sir,

Downing Street, 27th July, 1827.

I have received your dispatch of the 21st of February last, submitting the expediency of competent Officers of the Royal Engineers being sent out to New South Wales, accompanied by proper Workmen, etc., in order to place the Military Defences of the Colony in a better state to resist any attack, which might be made upon it by an external Enemy, than in which you conceive them to be at present. I beg to remind you, in reply, of the result of the communications upon this subject, which have been already addressed to the Master General and Board of Ordnance, with which you were made acquainted by the late Secretary of State in his dispatch of the 9th of October, 1826; to which I shall now only add that I must decline urging this point further upon their attention, as it appears that a compliance with your request would interfere with the publick Service by withdrawing the Engineer Officers, required by you, from other undertakings of equal importance to the object, which you are desirous of accomplishing, and which I am in some measure surprised to find you are unable to effect by the Assistance of those Military Officers (some of whom I conceive must be qualified for that duty) who are, at present, upon the spot.

I have, &c.,
GODERICH.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 38, per ship Woodlark: acknowledged by Governor Darling, 30th March, 1828.)

Sir,

Downing Street, 27 July, 1827.

Despatch
acknowledged.

I have received your dispatch No. 30 of the 22nd February, relative to the money advanced by you to the Corporation of the

Church and School Estates, until their own funds should become available for the erection of the Buildings, required for School houses and for the residences of the Clergy.

1827.
27 July.

With reference to that part of your dispatch, in which you advert to the circumstances of the Corporation having a claim to one eighth of the Custom Revenue set apart by Governor Macquarie (since confirmed to the Trustees by the 23rd Clause of the Charter) and to your suggestion whether, now that so large a part of the Territory has been assigned for the support of the Church and School Establishment, it may be necessary to perpetuate this Grant, I do myself the honor to acquaint you that, as you have not stated in what manner the Orphan School is to be supported (in case the Grant from the import duties should be discontinued) until such time as the Funds of the Corporation, derived from the Revenues of the Church Lands, shall become available for that and other purposes, I do not think it advisable to discontinue altogether this allowance for the purpose of throwing the expence upon the Corporation; nor do I deem it proper to withhold the Salaries of the Clergy, which will, as soon as circumstances may admit, be paid from the same source. I am of opinion, however, that it will be expedient to alter the Charter in this respect with the view of enabling His Majesty to grant a fixed Sum for this object to be paid so long as the Corporation may be unable to take that charge either in whole, or in part, upon themselves, rather than that the present mode of contributing an uncertain amount should be continued. As you have not acquainted me with the actual annual expense of the Male and Female Orphan School, I am not in a condition to decide what sum will be required for the maintenance of those Establishments; and, therefore, for the present, I shall propose that a Sum equal to that which, upon an average of the last five years, may appear to have been contributed by the Colonial Government, should still be appropriated to this Service, until, as I have before observed, the funds at the disposal of the Corporation should admit of any further deduction taking place.

Fixed annual
grant proposed
for corporation
of church and
school estates.

Upon the whole of this subject, the information at present in this Office is so limited that I find it impossible to do more than to express myself in these general terms; but I am as anxious as my Predecessor expressed himself to be in his letter of 11th Decr., 1826, to be furnished at the earliest possible period with a detailed Report upon the state of the Established Church in the Colony, as well as of the Schools of whatever description, which are supported out of the Colonial Revenue.

Report
required on
churches and
schools.

And with regard to the former point, I wish particularly to know whether any steps have been taken in those Parishes near

1827.
27 July.

the large and more populous Towns and Villages to bring into cultivation, and to render available for the maintenance of the Clergymen appointed to such Parishes, the land set apart for that purpose.

I have, &c.,

GODERICH.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 39, per ship Woodlark; acknowledged by Governor Darling, 31st January, 1828.)

Sir,

Downing Street, 27 July, 1827.

Instructions re
land grants
to clergy.

I have the honor to acquaint you, in reply to your dispatch of the 28th of February last, respecting the applications, which have been made to you on the part of the Clergy for Grants of Land, that, as it would perhaps be unjust to debar the Clergy from the advantages which belong to the Possession of Land so long as they remain without the accommodation of Parsonage Houses, or until the usual Glebe to be attached to their residences may have been set apart for their use, I have to convey to you my sanction of the Grants which you have made to them; but I think it necessary at the same time to acquaint you that, with the exception of the Archdeacon (to whom the same proportion of Land, as is allowed to the other principal Officers of your Government, vizt. 2,560 Acres, should be given) they should be restricted to 1,280 Acres, that quantity being considered by His Majesty's Government as sufficient in addition to their Glebes for all domestic purposes; and you will accordingly give them to understand that no farther Grants or Purchases of Crown Lands will be permitted to them. I beg further to acquaint you that care will be taken to explain to any persons, who may hereafter be appointed Colonial Chaplains, that they will not be allowed to receive any Land from the Crown, beyond that which may be allotted to them as Glebe, as I do not approve of their having the means, should they be so inclined, of giving up any portion of their time to Agricultural pursuits, which must, more or less, interfere with their more important avocations.

I have, &c.,

GODERICH.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Woodlark; acknowledged by Governor Darling, 13th March, 1828.)

Sir,

Downing Street, 27 July, 1827.

Rent of
house for
Lady Brisbane.

I have acquainted Viscount Goderich with the circumstances stated in your letter of the 26th of February last, under which you had been induced to incur an expense of £100 for the

hire of a house for the accommodation of Lady Brisbane and her Daughter on the arrival of the late Commodore, Sir James Brisbane, at Sydney; and I am sorry to inform you that, however much his Lordship regrets the expense to which you will be exposed by your anxiety to shew these Ladies proper attention, he does not feel himself at liberty to sanction the payment of the above Sum out of the Colonial Revenue.

1827.
27 July.

Payment of
rent refused.

I am, &c.,
R. W. HAY.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 40, per ship Woodlark; acknowledged by Governor Darling, 31st January, 1828.)

Sir, Downing Street, 28th July, 1827.

28 July.

I have received your dispatch, No. 36 of the 1st of March, transmitting the Copy of a letter from Mr. Carter, the Chairman of the Quarter Sessions, in explanation of the expenses to which he is subjected in the performance of his duty as Chairman of the Quarter Sessions; in reply to which, I have the honour to acquaint you that His Majesty's Government consent to your granting annually to Mr. Carter, in addition to his Salary, an allowance at the rate of £100, on account of such expenses, provided they shall appear to you to have been actually incurred.

Travelling
allowance to
W. Carter.

I have, &c.,
GODERICH.

UNDER SECRETARY HAY TO GOVERNOR DARLING.*

Sir, Downing Street, 28th July, 1827.

I am directed by Lord Viscount Goderich to transmit to you the inclosed Application from Mr. Michael Phillips, who is desirous of becoming a Settler at New South Wales, together with a letter from Sir Robt. Farquhar, to whom Mr. Phillips is personally known, bearing testimony to this Gentleman's Wealth and respectability; and I beg at the same time to acquaint you that Lord Goderich will be glad to comply with the wishes of the Party so far as may be consistent with existing Regulations.

Recommend-
ation of
M. Phillips for
land grant.

The quantity and situation of the Land to be granted to Mr. Phillips will of course depend upon the Capital, which he shall take out with him to the Colony, and upon other circumstances which must be left with you to decide.

I have, &c.,
R. W. HAY.

1827.
28 July.

[Enclosure No. 1.]

SIR ROBERT FARQUHAR TO UNDER SECRETARY HAY.

My dear Sir,

Richmond Terrace, 21st July, 1827.

Testimony
in favour of
M. Phillips.

I have been requested to forward to you the enclosed Petition from Mr. Michael Phillips, who is desirous of becoming a Settler at New South Wales. I am happy, at the same time, to avail myself of the Opportunity of bearing testimony to the wealth and respectability of this Gentleman's Connections, and to state my opinion that he possesses the means, if properly applied, of not only benefiting himself, but of advancing the public Prosperity in that Colony by the employment of a considerable Capital and by the encouragement of useful Industry. I have, therefore, felt the less hesitation in being the Channel of conveying to you his Petition, with a request that you will afford it such Countenance and support, as the nature of his application and the respectability of Mr. Phillips and of his Friends and Relations, from whom I have made the fullest Enquiries as to his Character, may appear to you to render proper and advisable.

I have, &c.,

R. T. FARQUHAR.

[Enclosure No. 2.]

MR. M. PHILLIPS TO EARL BATHURST.

My Lord,

No. 108, London Wall, 11th April, 1827.

Application
from
M. Phillips for
land grant.

[*The first three paragraphs were practically repetitions of the corresponding paragraphs in the letter dated 4th January; see page 132.*]

I intend to proceed to Sidney with an Investment of a Considerable Amount which, as soon as realized, I intend to employ in this undertaking.

I can also give this assurance to Your Lordship that Means will be greatly increased, in proportion as I may meet with Success in this enterprize; and I pledge myself now to employ a Capital to the extent of Three Thousand Pounds in this undertaking, which I flatter myself will not prove less beneficial to the Interests of this Country, in promoting the great public objects Your Lordship has in View, than to individual industry and exertion.

[*The last three paragraphs were almost repetitions of the corresponding paragraphs in the letter on page 133.*]

I am, &c.,

MICHAEL PHILLIPS.

UNDER SECRETARY HAY TO GOVERNOR DARLING.*

1827.
28 July.

My dear Sir,

Downing Street, 28th July, 1827.

This letter will be delivered to you by Mr. Duker, who is proceeding to New South Wales for the purpose of settling in that Colony. This Gentleman has been strongly recommended by Lord Warncliffe, and I, therefore, beg to request your good Offices in favor of Mr. Duker, who, from having lately directed his attention to the occupation of Surveying, may be competent to render himself useful to the Colonial Government, should you have any opportunity of so employing him in that Department.

Recommend-
ation in
favour of
Duker;

I remain, &c.,

R. W. HAY

UNDER SECRETARY HAY TO GOVERNOR DARLING.*

My dear Sir,

Downing Street, 28th July, 1827.

Lord Goderich has desired me to introduce to your protection and good Offices the Bearer of this letter, Captain Hungerford, who is going out to New South Wales for the purpose of Settling there. This Officer has been strongly recommended to Lord Goderich by Lord Ilchester, who has also written the inclosed letter to Mr. Horton in his favor; you will of course direct that Captain Hungerford should receive such a Grant of Land, as the amount of his Capital may permit, and I beg in addition to state that Lord Goderich will be happy to find that you have had an opportunity of conferring some employment upon Captain Hungerford under the Colonial Government.

and of
Hungerford.

I am, &c.,

R. W. HAY.

[Enclosure.]

[A copy of this letter is not available.]

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 77, per barque Faith.)

My Lord,

Government House, 28th July, 1827.

I have the honor to acknowledge the receipt of your Lordship's Despatches, numbered 8 and 10 of the present year; and I beg to assure your Lordship that I have derived much satisfaction from the appointment of Major Mitchell to be Deputy Surveyor General, feeling that the Public will be materially benefitted by the services of so competent an Officer.

Appointment of
T. L. Mitchell
as dep. surveyor
general.

Your Lordship will perceive by the enclosed copy of a letter from Captain Dumaresq that he is most sensible of the kind disposition your Lordship has been pleased to evince in tendering

* Note 6.

1827.
29 July.

for his acceptance the appointment of Civil Engineer; but, feeling that he is not sufficiently qualified for that Office to justify his profiting of your Lordship's favourable attention, he begs he may be permitted to decline the appointment.

I have to request under the circumstances that his application to retire on Half Pay may not be acted on.

I have, &c.,

RA. DARLING.

[Enclosure.]

CAPTAIN DUMARESQ TO GOVERNOR DARLING.

Sir,

Sydney, 27th July, 1827.

Appointment as
civil engineer
refused by W.
Dumaresq.

With reference to Your Excellency's communication informing me of the kindness of the Right Honble. the Earl Bathurst, in having offered to my acceptance the appointment of Civil Engineer, I beg to be permitted to express my grateful thanks for this flattering mark of attention from His Lordship, and to your Excellency for the kind interest taken in my behalf in having in any way brought my name under His Lordship's notice; but, as I do not feel myself fully competent to the direction of this Department, I could not consistent with my sense of Duty accept the appointment, and I regret being under the necessity of declining it. I cannot but feel that I have only been permitted to fill the situation from the circumstance of there not being any competent person, unemployed in the Colony, to enter upon it; and, although I shall cheerfully continue to discharge the duties to my best abilities, so long as my doing so may be convenient to the Government, I shall nevertheless be anxious to be relieved, whenever an eligible person can be found to undertake them.

I have, &c.,

WM. DUMARESQ, Capt., R.S.C.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per barque Faith.)

Sir,

Government House, 28th July, 1827.

Report on
health of
J. Holland.

I have the honor to forward the copy of a Report, which I have received from Mr. Bowman, the Principal Surgeon, representing the unfortunate situation of Mr. Holland. The event has not in the least surprized me, as Mr. Holland's conduct from the first moment of his arrival had indicated an unsettled and eccentric mind. He has within the last few days suffered so much in his health that his life was supposed to be in danger; but I understand he is better at present though still kept under confinement in the General Hospital. I have provided for the temporary discharge of the duty of Commissioner of the Court

of Requests, and shall make some more permanent engagement should Mr. Holland's situation not permit of his reassuming his duties.

I have, &c.,

RA. DARLING.

1827.
23 July.

[Enclosure.]

PRINCIPAL SURGEON BOWMAN TO COLONIAL SECRETARY MACLEAY.

His Majesty's General Hospital,
Sydney, 10th July, 1827.

Sir,

I have the honor to acquaint you, for the information of His Excellency the Governor, that I visited Mr. Holland, the Commissioner of the Court of Requests, agreeably to the Instructions contained in your Letter of the 15th June, and found him in a state of mental derangement. I immediately caused him to be removed from his family, and placed under a proper restraint in the south wing of this Building, where he still remains; but I am sorry to be under the necessity of reporting that I do not perceive much amendment of his malady since he came here.

Medical report
on health of
J. Holland.

I would, therefore, respectfully beg leave to suggest for His Excellency's consideration the propriety of granting Mr. Holland two months' leave of absence from the duties of his Office, and, at the expiration of that period, I may be enabled to pronounce a more decided opinion of the probability of the ultimate recovery or permanent incapacity of that Gentleman.

I have, &c.,

J. BOWMAN.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per barque Faith.)

Sir,

Government House, 29th July, 1827.

25 July.

In consequence of the communication, made to me in your Letter of the 8th of August last, respecting Mr. Alexander Beauvais, I was desirous of availing myself of that Gentleman's Services, and employed him for some time (about six months) at the Government Agricultural Establishment at Emu Plains. I am concerned to add that the state of his health prevented his continuing his services, and that he was confined for some time in consequence of Mental Derangement, with which there is little doubt he has before been afflicted. On his recovery, he expressed an unwillingness to remain in this Colony, and mentioned his having hopes of having employment in Van Diemen's Land in Captain Thomas's Establishment. I consequently directed that the sum of £100 should be issued as remuneration for his services

Employment of
A. Beauvais at
Emu plains.

1827.
29 July.

at Emu Plains; and I now request you will forward the necessary authority for this advance being admitted in the Public Accounts.

I have, &c.,
R. DARLING.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 41, per ship *Florentia*; acknowledged by Governor Darling, 8th January, 1828.)

30 July.

Sir,

Downing Street, 30th July, 1827.

Instructions
re finances
of colony.

I have recently had under my consideration the statements of Revenue and Expenditure of the Government of New South Wales during the year 1826, transmitted to me in your despatch of the 9th of February last; and, as it is necessary that I should explain to you the sentiments of His Majesty's Government upon this subject, I will, with a view to the more convenient examination of its details, in the first place enumerate the description of the charges, which it appears the Colony has to defray, and in the next place the sources from whence the means of defraying them are derived.

Separation
of heads of
expenditure.

With respect to the first point, it seems impossible from the system, which has hitherto prevailed, to separate the various heads of Expenditure in such a manner as to estimate with accuracy the actual amount of such charges, as they have hitherto stood. I, therefore, can only state in general terms that its expenditure appears to be comprised in the annual charge on account of the Civil Establishment, including Miscellaneous Civil Services and the value of Stores sent out from England, the expense occasioned by the Convict Establishment, their superintendence and maintenance, and the disbursements incurred on account of the Military.

The charge for the Civil Establishment, if estimated at the Sum at which it amounted in 1826, may be estimated at

£ s. d.
77,072 0 9

The Miscellaneous Services may be taken at..

8,557 3 4

The value of the Stores supplied from England may be calculated at

20,000 0 0

The expense of the Convict Establishment may be estimated at

51,106 3 4

The Military disbursements at

52,226 18 11

Amounting in the aggregate to the Sum of .. £208,962 6 4

With respect to the revenue, it appears hitherto to have consisted of the Sums collected in the Colony on account of Duties,

etc., and the Monies, voted by Parliament as well for the support of certain Offices of the Civil Government as to answer Bills, drawn by the Commissariat Department on the Lords Commissioners of His Majesty's Treasury on account of the Convict Establishment.

1827.
30 July.
Sources of
revenue.

The first source of Revenue, if estimated at	£	s.	d.
what it produced in 1826, may be placed at	62,229	10	4

The second source, vizt. the Sums contributed by Parliament, as before stated, including the Consignment of Specie, does not appear to have been less for the same year than	154,860	9	6
--	---------	---	---

Producing a total of	£217,089	19	10
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I shall now proceed to state the arrangement, which His Majesty's Government propose to adopt for the Establishment of a more regular system of accounting for the expenditure of the Colony under your Government.

New system
of accounts
adopted.

Many charges have hitherto been defrayed out of the Colonial Revenue, which would with more propriety fall upon the Government at home; and, on the other hand, many charges, which are exclusively Colonial and which therefore should be paid out of the Revenues of the Colony, have been either provided for by an especial Grant from Parliament, or have been defrayed from the amount voted for another Service, vizt. for the support and maintenance of the Convict Establishment.

As such an arrangement rendered extremely complicated the financial transactions of the Colonial Government, it was determined, as you are aware, to do away entirely with the Estimate annually submitted to Parliament for the expense of a part of the Civil Establishment; to throw upon the Colonial funds the Salaries of such Offices as were thus defrayed; and to relieve those funds from several expenses which, as being more or less connected with the Convicts, devolved with greater propriety upon the Home Government.

Separation of
expenditure
into two
divisions.

Although His Majesty's Government have not yet received the Official Report, which you were desired to send home upon this subject, yet sufficient information is to be collected from the Statements of Revenue and Expenditure, which you have now transmitted, added to the other particulars which are to be found in your late Dispatches, as to enable me at once to point out, without the necessity of my waiting for those further details, those charges which should be paid out of the Revenues of the Colony, and those which ought to be otherwise provided for; and, in making this separation, I am restricted in some degree by the

1827.
30 July.

Revenue
collected
in colony.

amount of Revenue, which appears to be available for the maintenance of those Establishments, which as a British Settlement (not in relation to its situation as a Place of Banishment for persons convicted of Offences in the Mother Country) it will be compelled to keep up and support. The Net produce of the Revenue collected in the Colony may be estimated, as I have before observed, at £62,229 10s. 4d.; out of which, I propose should be defrayed for the future the following charges, vizt.

Charges to be
met out of
revenue.

	£	s.	d.
The Emoluments of the Governor	4,933	0	0
The Legislative Council	700	0	0
The Judicial Establishment*	15,762	0	0
Salaries and Allowances for Clergymen and Schoolmasters and maintenance of Schools..	12,800	0	0
Colonial Secretary's Office	4,373	0	0
Anditor and his Establishment	234	0	0
Colonial Treasurer do.	1,386	0	0
Naval Officer and Fees derived by him on collection of Revenue	2,585	0	0
Surveyor of Distilleries and his Establishment..	781	0	0
Superintendent of Govt. Slaughter House	75	0	0
Surveyor General's Department	5,216†	0	0
Commis'srs for Apportioning the Colony	902	0	0
Engineer Depart't and Inspector of Roads	5,073‡	0	0
Botanical and Horticultural Establish't	193	0	0
Conveyance of Letters	86	0	0
Miscellaneous Services and Disburse'ts	1,848	0	0
Pensions in the Colony	695	0	0
Pensions in England and Remittances	4,000	0	0
	£61,642	0	0

From the above list, you will observe that every charge with the exception of the Police and Jail Establishments, which can in any way be considered as belonging to the Civil Institutions of the Colony, has been included; and the two excepted items appear so intimately connected with the Convict Branch of the Service that I do not think it advisable to divide any part of the expense incurred on those heads for the purpose of throwing a proportion of it upon the Colonial Revenues, more especially as they will be called upon to defray the whole of the Judicial Establishment.

It only now remains for me to point out to you those particular charges, which under the new arrangement it is proposed that the Lords Commissioners of the Treasury should provide for in

* *Marginal note.*—This includes the Salary of the new Judge, as well as that of the Solicitor General, vizt.—£1,500; £800—£2,300.

† *Marginal note.*—This includes the late increase of Salaries and of Establishment, which has given rise to an additional Expense of £2,150.

‡ *Marginal note.*—In this is included the late appointment of Captain Dumaresq as Civil Engineer with a Salary of £500 pr. Annum.

addition to the Sum, annually required to answer the Bills drawn upon their Lordships from the Colony for the maintenance of the Convicts. These are as follows, vizt.

	£	s.	d.	1827. 30 July. Charges to be met by English treasury.
The Medical Establishment	2,585	0	0	
The Marine	3,874	0	0	
The Police Establishment	18,342	0	0	
Printing Govern't Regulations and Notices	920	0	0	
Penal Settlements and farms	8,595*	0	0	
	£34,316	0	0	

As the aggregate Sum to be defrayed as before stated and of the funds collected in the Colony will come within the amount, at which those funds are estimated, and as I am aware that the inefficient state, in which you found most, if not all, of the Departments of your Government on your arrival at New South Wales has given rise to many alterations necessarily leading to an increase of Expenditure, I shall not urge upon your attention at the present moment any immediate Retrenchments, confident that you will be not less anxiously impressed than I am with the necessity of observing the strictest economy in the application of the means, which are placed at your disposal and that you will readily enter into the views and wishes of His Majesty's Government by keeping down the Expenditure, so that it shall at least not exceed, although it may not fall materially within the Revenue of the Colony.

Economy to
be practised.

I have, &c.,

GODERICH.

P.S.—You will observe that the foregoing statement of charge to be thrown upon the Colonial Funds is founded upon the existing estimated amount of that Revenue; but, as the growing prosperity of the Colony may augment its receipts, you must be prepared to expect that some portion at least of the Convict Expenses (particularly those of a mixed nature such as the Police) will eventually become chargeable upon the Colonial Treasury.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Per ship *Florentia*; acknowledged by Governor Darling. 31st January, 1828.)

Sir, Downing Street, 30th July, 1827.

I am directed by Lord Viscount Goderich to transmit to you the enclosed Copy of a Letter from Messrs. John Bettington & Co., Merchants, who are about to employ considerable funds, under the direction of one of their Partners, in promoting the

Recommendation of
J. Bettington,
Sons and Co.
for land grant.

* Subject to eventual diminution by the Reduction of the Farms.

1827.
30 July.

Recommend-
ation of
J. Bettington,
Sons and Co.
for land grant.

Growth of Wool at New South Wales and in other undertakings, which appear to his Lordship to be favorable to the Interests of the Colony. Under these circumstances, I am to request that you will make to the Parties a Grant of Land, in proportion to their means, and afford them such facilities in the furtherance of their objects, as it may be in your power to grant, consistently with established Regulations.

I have, &c.,

R. W. HAY.

[Enclosure.]

Memorial of
J. Bettington,
Sons and Co.

THE MEMORIAL of John Bettington, Sons, and Co., Merchants of
No. 8 Bank Chambers, Lothbury, London,
Sheweth,

That your Memorialists are considerable general Merchants and importers of Foreign Wool from Germany and the Colonies of New South Wales. That, from their local information, Memorialists are fully convinced the growth of Wool in New South Wales may be very materially increased, and the quality equally improved to the great benefit of those Colonies. To accomplish these objects, Memorialists propose ordering their correspondents in Germany to purchase a considerable number of Sheep of the most esteemed flocks, and Ship them forthwith for Sydney, accompanied by proper Shepherds and a person conversant with the present method of sorting German Wools, which the growers so much stand in need of. Memorialists, the better to secure the above objects, have engaged one of their partners to reside in the Colony, who, independent of a large investment, is also provided with most ample funds to accomplish another highly desirable point, namely, making Cash advances on the Spot to the Colonists on security of their Wools destined for this Country; such facility must be of great importance to them, which it is presumed has never yet been afforded.

Memorialists, in conclusion, beg to refer to Sir Richard Carr Glyn Hallifax and Co., Bankers, for their respectability, and will be happy to afford any further explanation of their intentions, and with all possible respect submit their case to the favourable consideration of The Right Honorable The Viscount Goderich, requesting he will be pleased to direct that their partner may be furnished with such Letters, as will enable the Governor to grant them a large portion of suitable Land, with such other encouragement as the nature and magnitude of the undertaking will require.

The Right Honorable The Viscount Goderich,
Secretary of State for the Colonies.

27 July, 1827.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

1827.
30 July.

(Despatch per barque Faith; acknowledged by Governor Darling.
31st March, 1828.)

Sir, Government House, 30th July, 1827.

I have been induced to transmit to you the accompanying Extract of a Letter, which the Reverend Mr. Marsden has lately received from the London Missionary Society, containing information of six ships having been fitted out by the French, being destined as is supposed for these Seas.

Reported
French
enterprise in
south seas.

I conclude the circumstance is known to His Majesty's Government, though I have not received any Instructions on the subject, nor am I indeed aware that any steps could be taken here to *counteract* the object they appear to have in view. I have nevertheless deemed it advisable to put you in possession of the information, as it has been received, and you will judge whether it may be necessary to take any steps in consequence.

I have, &c.,
RA. DARLING.

[Enclosure.]

EXTRACT of a Letter to the Reverend Samuel Marsden from the London Missionary Society, dated 22nd March, 1827.

"BEFORE we conclude the present letter, we deem it not improper to communicate to you the particulars of information, we have not long since received from persons resident in France, or who had lately visited it, relating to an expedition from that country to the Sandwich and Society Isles under the sanction of the highest authorities of that Kingdom. The immediate object of the Expedition is supposed to be the supplanting of the Protestant Religion in the Islands mentioned, and the Establishment of Popery in its stead, together with a political influence over the Islanders, to be rendered in the issue subservient to commercial undertakings, which there is reason to believe are the principal though ulterior objects in view.

Reports of
proposed R.C.
missionary
enterprise in
south seas.

"We are informed that a Vessel from 460 to 480 tons burthen, whose name we have not as yet been able to ascertain, said to have been fitted out by an eminent Banker in Paris (M. Laffitte), sailed from Havre on the 9th April last, on board of which were embarked 8 or 10 Catholic Priests, some of whom were to be stationed at Hawaii and the rest at Oahu. The course of this Vessel, we understand, was as follows:—Rio, Lima, probably Acapulco, Sandwich Islands and China.

"*Le Telegraphe*, fitted out by a respectable mercantile House at Bourdeaux, sailed from that Port on the 31st July last, bound to

1827.
30 July.

Reports of
proposed R.C.
missionary
enterprise in
south seas.

Chili and Lima. The *L'Ange Gardien* Armateur Guevin Malaqué sailed about five months ago from Bourdeaux, and took out Musical instruments but no Priests.

"*Le Comete*, Captain Plaissard, of 600 tons, belonging to the House at Bourdeaux, to which we have already alluded, sailed from that Port on the 2nd of December last. She had 46 Seamen on board and many passengers, among whom were 6 or 8 Catholic Priests. This Vessel took on board one or more organs, and several cases, of which the contents were unknown, except that two of them are declared *Ornamens d'Eglise*. Besides the passengers already mentioned, there were Engineer Officers, with Artillery and ammunition, Artizans of every description, agricultural implements, etc., in short everything necessary for forming a Colony, and which it is understood is to be formed at Tahiti. There were also on board two *sugar* refiners for Oabu, with the requisite utensils. There was also a Cotton Press for the same place. We are informed that this Vessel is, in the first instance, bound to Lima, and will afterwards touch at Sansanato and the coast of California, then to proceed to the Sandwich, and lastly to the Society Islands. On board the above mentioned Vessels have been shipped what may be called the paraphernalia of Popery, consisting of splendid vestments, crucifixes, etc. There is also an elegant temple or Church in frame, and a great variety of philosophical apparatus, including galvanic instruments, etc. The Priests, who are of different Orders, we understand, were selected for their imposing personal appearance and captivating address. They are accompanied by numerous attendants. Another vessel connected with the Expedition is expected to sail for the Pacific in May next."

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 42, per ship Woodlark; acknowledged by Governor Darling, 31st January, 1828.)

31 July.

Military
detachments in
Tasmania.

Sir,

Downing Street, 31 July, 1827.

I have much pleasure in acquainting you, in reply to your dispatch of the 13th of February last, No. 23, that the arrangements which you have made for augmenting the Military force at Van Diemen's Land, are approved by His Majesty's Government; and I equally trust with you that the means, now placed at the disposal of the Lieutenant Governor, will enable him to provide in a more effectual manner than hitherto for the tranquillity of that Colony.

I have, &c.,

GODERICH.

UNDER SECRETARY HAY TO GOVERNOR DARLING.
(Despatch per ship Woodlark.)

1827.
31 July.

Sir,

Downing Street, 31 July, 1827.

I am directed by Lord Viscount Goderich to transmit to you the inclosed Copy of a letter from the Home Office, with its enclosure respecting a Convict named Thomas Hart, who was transported to New South Wales in the year 1823; and I am to request that you will inform me whether the Prisoner is still alive, with any other Information which you have the means of affording with respect to him.

Report to
be made re
T. Hart.

I am, &c.,

R. W. HAY.

[Enclosure.]

[This was a request from the Reverend Robert Trail, asking to be informed whether T. Hart was alive or dead.]

GOVERNOR DARLING TO SECRETARY HARRISON.
(Despatch per barque Faith.)

Sir,

31st July, 1827.

I have the honor to transmit the annexed Register, stating the particulars of a Bill drawn on the Lords Commissioners of His Majesty's Treasury, as required by the 12th Clause of the Public Instructions addressed to me by their Lordships.

Bill drawn on
H.M. treasury-

I have, &c.,

RA. DARLING.

[Enclosure.]

[This enclosure was similar to that on page 362.]

GOVERNOR DARLING TO UNDER SECRETARY HAY.
(Despatch per barque Faith.)

My dear Sir,

Government House, 1st August, 1827.

1 Aug.

I have frequently adverted to the impediments, which have been interposed to the prosecution for Libels; and I shall now put you in possession of a case of this nature, which has been recently brought under my notice, without, however, presuming it being altogether a legal question to pronounce on its merits.

The conduct of the Chairman of the Quarter Sessions having been very very improperly animadverted upon in the "Australian" Newspaper of the 20th January last,* orders were given for the prosecution of the Editor and Publisher at the instance of the Crown, and Mr. Carter, it appears, also determined on bringing a Civil Action for the recovery of Damages. The Trial having been put off from time to time and at length finally set aside, as I was lately informed, I desired that Mr. Carter and

Prosecution of
R. Wardell
for libel.

Postponement
of trial.

* Note 113.

1827.
1 Aug.

Reports by
W. Carter and
J. Norton.

Mr. Norton might be called on to explain the cause. Mr. Carter is the Chairman, who had been libelled, and Mr. Norton is a professional Gentleman, whom I have found it necessary to employ to assist the Acting Attorney General in cases of this nature.

It is unnecessary for me to enter further into the matter, as the reports of the above Gentlemen, copies of which I beg leave to enclose, will inform you better than it would be in my power to do.

Duties and
powers of
attorney-
general.

I may, however, be permitted to observe, in reference to the Opinion which, it appears, Mr. Forbes has *now* given with respect to the duties and powers of the Attorney General, that he has repeatedly told me that the Attorney General possessed the powers of a Grand Jury, and was competent of his own authority to prosecute for libel. I cannot have misunderstood him, as I had before conceived the Attorney General was to wait for Instructions from Government, and the contrary appearing by the statement of the Chief Justice to be the fact made a strong impression on my mind. The doctrine of the present day is, however, different; and it further appears by Mr. Norton's report to have been observed by the Chief Justice "that it was not to be endured that the words of the Act (Attorney General or other person to be appointed by the Governor) could invest any one, the Governor might think proper to appoint, with the great power and discretion exercised by that Officer in England."

Opinion of
J. Norton *re*
prosecution of
R. Wardell.

Mr. McLeay having written to me to the following effect, "I yesterday had a long conversation with Mr. Norton, and I am sorry to tell you that he thinks that Wardell is so supported that it is in vain to attempt to prosecute him," I thought it necessary to see Mr. Norton on this, and he repeated to me what he had stated to Mr. McLeay. I understand he has given the same opinion to an Individual, who was desirous of prosecuting Dr. Wardell, but who, in consequence, declined pursuing the matter.

Power assumed
by chief justice.

I trouble you with these details, considering it of the greatest importance to the tranquillity of this community that you should be fully informed of the position in which the Government is placed, by the proceedings of the Chief Justice, who, if he has not usurped the conduct of the Administration, manages to control it in such a manner as to render it subservient to his own views.

I think I am justified in saying this, having shown in former Letters that he has assumed to himself the right of controlling the Governor and Council in levying a Tax (though he had certified that such Tax is not repugnant to the Laws of England) on the ground of his not being satisfied of the necessity of

imposing a Tax to the amount proposed, and *now* in permitting the libellers of the Government to escape Justice through the chicanery of the Law.

I have, &c.,

RA. DARLING.

P.S.—Since closing the above, I have received a note from the Colonial Secretary, dated the 3rd of August, from which I extract the following:—"The Attorney General will have told you that, to the astonishment of Messrs. Moore and Norton, the Judges have allowed Dr. Wardell to traverse till the next term in the cases of Judge Peddar and the libel of *Vox Populi*."

1827.
1 Aug.
Postponement
of trials of
R. Wardell.

The former was a prosecution at the instance of Judge Peddar, in consequence of the Article in the *Australian* of the 27th of March last, which has already been brought under your notice. The latter was for a Libel on myself. It is presumed that the Judges have not acted illegally in granting delay; but the Editor of the *Australian* has no claim to indulgence. You will see, on referring to the Libel on Judge Peddar, that Mr. Forbes has abundant reason for wishing to quash it altogether, as indeed the two first Articles in the *Australian*, above referred to, identify the two Judges as the coadjutors of Dr. Wardell in defaming the Government.

R.D.

[Enclosure No. 1.]

MR. W. CARTER TO COLONIAL SECRETARY MACLEAY.

Sir,

Sydney, 23rd July, 1827.

I had the honor to receive your Note of the Instant, intimating a wish that I would state to you what had been done in the prosecution carried on against Dr. Wardell for his Libels upon me. My continued ill health has prevented me attending Court on the days, when the subject was brought forward; but I learn through the Attorney General and my Counsel, Mr. Norton, that the Chief Justice has at length thrown me out of Court. I consider the conduct of Mr. Forbes throughout to have had one object in view, namely, that of protecting Dr. Wardell from the necessary consequences of his conduct, as the Editor of the *Australian Newspaper*. A plain statement of Mr. Forbes' conduct through the whole of this prosecution can leave no doubt of the object, he had in view; and I must say that, in its consequences, it amounts to a denial of Justice.

Report by
W. Carter on
preliminary
proceedings in
prosecution of
R. Wardell
for libel.

A public prosecution was commenced by the Attorney General against Dr. Wardell for a Libel upon me, as a Public Officer. I also commenced an action against Dr. Wardell for the same Libel. Mr. Forbes refused to consider it as a public prosecution; and, both the prosecution and the action having commenced, he compelled me to elect one mode of proceeding. I elected to proceed with the Criminal information; this election was made

1827.
1 Aug.

Report by
W. Carter on
preliminary
proceedings in
prosecution of
R. Wardell
for libel.

by the order of the Court. I was permitted to choose which of the two proceedings, already commenced, should be carried on, and when this election was made, by the order of the Court, I need not say that the prosecution was carried on by its consent; but how does Mr. Forbes act? Why! when the cause is attempted to be brought to a hearing, and the usual process of the Court is sought for compelling the Dr. to plead, Mr. Forbes rules that I had proceeded without the consent of the Court, and that, therefore, he would not allow process to issue to compel Doctor Wardell to appear. Dr. Wardell's motion was that I should elect, and be compelled to relinquish one of the proceedings, I had commenced. Not a word was hinted that I had commenced my information without the consent of the Court, and that, therefore, the proceedings were wrong altogether; and, when I repeat that the Election was made by the order of the Court, it is an insult to common sense to say that I did not proceed with its consent. But time has been gained. The Dr., though a gross, is still an unconvicted libeller, an object of no small importance to Mr. Forbes, when the events that have taken place in this Colony for the last few months are considered.

I feel no hesitation in saying that Mr. Forbes had no right to put me to my election. It was a public prosecution, carried on by and at the expence of the Crown; and I had a right to my private remedy; but Mr. Forbes now makes my election, which was done by the compulsion of the Court, an argument to show that it was a private prosecution. I understand, when this case was last before the Court, Mr. Forbes thought proper to advance some doctrines as to the powers of the Attorney General, which in their consequences may be important.

I learn from Mr. Norton that he stated very broadly, in the course of this cause, that the Attorney General here is in fact no Attorney General, at least that his Office does not carry with it the powers and privileges of the Attorney General in England, and in fact that he has not the power to institute *ex officio* Informations. This is, I believe, a new doctrine here. The extraordinary duties imposed by the New South Wales Act were always considered by Mr. Bannister as cumulative, and not as impinging upon the usual and ordinary powers of the Attorney General. Should the doctrine be correct, the consequences will be very serious, should this Colony ever have the misfortune to have a Judge acting in professed opposition to its Government. I understand that Mr. Forbes in his judgment said that he gave no opinion as to the powers of the Attorney General, though the observations he made during the sitting of the Court left no doubt as to what his opinions or doctrines were.

In the case of *Wardell v. Howe*, Mr. Forbes left it to the Jury to decide whether the evidence produced amounted to a proof of publication. He told me since that it was wrong. If, therefore, the same point should arise in my ease, it is evident that I should be turned round. What was good in *Wardell v. Howe*, would not be good in *Carter v. Wardell*. Under such circumstances, I must recommend that the Prosecution be dropped. By my Election, I have lost my civil remedy.

I have, &c.,

WM. CARTER.

[Enclosure No. 2.]

MR. J. NORTON TO GOVERNOR DARLING.

Sir,

- Sydney, 31st July, 1827.

In submitting to your Excellency a report of the Judgment of the Court on Dr. Wardell's motion to set aside the proceedings on certain Informations, exhibited by Mr. Moore, the Acting Attorney General, against him for various Libels contained in the *Australian* Newspaper, I shall take the liberty of referring your Excellency to a very full report of the Motion, inserted in the *Australian* of the 29th June, 1827,* under the title of *Rex v. Wardell*.

Report by
J. Norton on
preliminary
proceedings in
prosecution of
R. Wardell
for libel.

In this report, which in other respects is exceedingly accurate, the Editor has carefully omitted the arguments used in support of the Prosecution, and which may perhaps now be more conveniently introduced as observations on the Judgment of the Court.

In the early part of his observations, the Chief Justice appears to doubt the right of the Attorney General to prosecute for libel (A), and whether the Officer described in the New South Wales Act has any powers of prosecuting without proceedings being first taken before the Magistrates, or without asking leave of the Court, and then asks the Attorney General, if this prosecution is to be considered *ex officio*, or limited by the letter of the New South Wales Act. The power of prosecuting, however, it would afterwards seem he admits the Attorney General to possess (C); but, on delivering the Judgment of the Court (B), the Chief Justice held that the only power possessed by the Attorney General was to withhold his name from Informations, or in other words to stop the course of prosecutions about to be commenced, and thought the Court called upon to interfere in regulating the practice.

No determination is in fact come to by the Court; and it is justly observed that the application was dismissed with remarks, which it would seem were chiefly intended as a reprimand on the conduct of the Attorney General.

1827.

1 Aug.

Report by
J. Norton on
preliminary
proceedings in
prosecution of
R. Wardell
for libel.

On reading the whole of the Report, it is difficult to arrive at any very definite conclusion on the matters discussed, and one is at a loss to know whether it is intended to be ruled by the Court that the Attorney General of the Colony is the same Officer as the Person so called in the New South Wales Act, and whether one or the other possesses any discretionary power at all except that of checking prosecutions by refusing his name. On the part of the Crown, it was contended that these prosecutions were all *ex officio*, and that all prosecutions in the name of the Attorney General are so. It was, in the course of the arguments, assumed by the Court that there was no Attorney General here, and that it was not to be endured that the words of the Act "Attorney General or other Person to be employed by the Governor" could invest any person, the Governor might think proper to appoint, with the great power and discretion exercised by that Officer in England.

The Attorney General, on the other hand, contended that the Commission, he received from the King, gave him all the power and authority in the Colony that the Attorney General had in England; and that the object of appointing such an Officer was to support the Government of the Colony. Here his power would have ceased but for the New South Wales Act; and how does that Act interfere with him? It simply enacts that all crimes, misdemeanors and offences, cognizable in the Courts respectively, shall be prosecuted by Information in the name of the Attorney General; and, as it was naturally foreseen that accident might deprive the Colony of this Officer, this place was to be filled by the Governor or Acting Governor. I admit that the Act says nothing about the practice of this Officer (A); it was unnecessary that it should do so. His duty is implied in his Commission; but, without a Grand Jury, it was necessary that some provision should be made for the prosecution of Offenders, and this duty was cast upon the Attorney General as the most proper officer. The silence of the Act, as to the mode of proceeding to be adopted by him, must have been, therefore, to prosecute in the usual manner, that is, *ex officio*. He not only prosecutes in cases extraordinary as in England, but in all cases in the Colony. But it is said the proceedings were to be in his name only, in order that he might withhold his name if he thought proper. Now, without the provisions contained in the New South Wales Act, all parties in the absence of a Grand Jury must either have applied to the Court for leave to file Informations, or trusted to the Magistrates to commit for Trial. The Magistrates might (in cases of Libel particularly) refuse to act, or not have sufficient

legal knowledge to do so. To the Court then, these parties must go. The Court would then be encumbered by the most tedious applications, would have a most undue authority over such cases, and the parties incur the most serious expence. How could this have been better provided for than by the directions, contained in the New South Wales Act, that the Attorney General should file such Informations. On his refusing to proceed in any particular case, the Court could still be resorted to. If my views are correct, these Informations were then *ex officio*, and I conceive the Court had no right to interfere and still less to animadvert on the conduct of the Attorney General. In reference to the case more particularly the subject of consideration (the proceeding for libel on Mr. Carter), it will be necessary, in order to prevent your Excellency from falling into misapprehension of the nature of the proceedings, to give a brief outline of the course which had been pursued.

1827.
1 Aug.
Report by
J. Norton on
preliminary
proceedings in
prosecution of
R. Wardell
for libel.

In the *Australian* newspaper of the 20th January last,* a very gross libel appeared on the conduct of Mr. Carter as Chairman of the Court of Quarter Sessions, tending not only to bring him into contempt with the Magistrates, but to hold his decision up to the ridicule of every person in the Colony. As this libel was calculated to do serious public mischief, it was looked upon as a proper subject for prosecution, and the Attorney General accordingly filed an Information against the Defendant, as Editor and Publisher of the Paper; with the mischievous view with which the Libel was published, it was whispered about that the Chairman would not venture to give the Author an opportunity of justifying in a civil action; the matter indeed was not capable of justification. But, to prevent the operation of the falsehood that was ingeniously circulated, Mr. Carter determined to bring his action; the defendant justified; and, perfectly conscious of the nature of the proceeding which had been adopted by the Attorney General, he moved the Supreme Court to enter a *Nolle Prosequi* on the criminal Information he had filed. On the motion being made, the Court granted a rule to show cause why Mr. Carter should not relinquish either the prosecution or the Civil Action. But, so far from an admission being then, or at any time, or in any manner, made that the Prosecution was a private one, it was strongly contended and urged on the Court that the Rule was not in conformity with the motion; that Mr. Carter was an Officer of considerable importance in the Colony; and that it was necessary to prosecute the mischievous attack on his conduct as a public Officer; and that, he having a clear right to commence a civil action, the Court ought not to stop either of the proceedings.

* Note 113.

1827.
1 Aug.

The Court, however, refused to allow both proceedings to go on; and Mr. Carter, feeling that the mischief to the Public was greater than the damage sustained by him in his private capacity, gave up his Civil Action.

I have, &c.,

J. NORTON.

[Enclosure No. 3.]

[*This was a copy of the issue of the "Australian" newspaper, dated 29th June, 1827.**]

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Florentia.)

2 Aug.

Transmission
of imperial
statute.

2nd August, 1827.

MR. HAY presents his compliments to General Darling, and begs to inclose for his information a Copy of an Act, passed last Session, for continuing until the 31 December, 1829, the Act passed in 1823 for the better administration of Justice in New South Wales and Van Diemen's Land.

[Enclosure.]

[*This was the act 7 and 8 Geo. IV, cap. lxxiii.*]

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 78, per barque Faith.)

My Lord,

Government House, 2nd August, 1827.

Despatches
acknowledged.

I have the honor to acknowledge the receipt of your Lordship's Despatches, as specified in the Margin,† which arrived on the 25th of last month by the Guilford Convict Ship, and I shall do myself the honor to reply, with as little delay as possible, to those which require being specially answered.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per barque Faith.)

2nd August, 1827.

Despatches
acknowledged.

[*This despatch was similar to the one above, and acknowledged despatches dated 21, 22, 23, 31 October; 1, 11, 13 November; 1, 10, 14, 22, 23, 24 December, 1826; 11, 18, 20, 21, 22 January; 2, 11, 18, 21, 22, 23 February; 1, 14, and 23 March.*]

* Note 114.

† The marginal note specified despatches numbered 88 to 104 of 1826, and 1 to 15 of 1827, and circular despatches dated 1st and 6th January, 1827.

VISCOUNT GODERICH TO GOVERNOR DARLING.

1827.
3 Aug.(Despatch No. 43, per ship *Florentia*; acknowledged by Governor Darling, 31st January, 1828.)

Sir,

Downing Street, 3rd August, 1827.

It having been deemed expedient (in addition to the encouragement held out to Officers of the Army, who might be disposed to sell their Commission to emigrate to New South Wales and Van Diemen's Land) to offer similar inducements to Officers of all Ranks on Half pay, who may wish to become Settlers in those Colonies, I do myself the honor of transmitting to you the inclosed Copy of a General Order, which has been issued from the Horse Guards, dated the 16th May last; and, as the same principle which was adopted in the case of the Officers, alluded to in the General Order* of the 8th June, 1826, will extend to those Officers, who may emigrate retaining their Half Pay, I have only to refer you on this subject to the dispatch, addressed to you by my Predecessor, dated 1st of October, 1826, and to desire that you will take especial care that those persons, who may arrive in the Colony under the faith of the present arrangement, may receive the benefits to which they may be respectively entitled.

Inducements
to military
officers on
half pay to
become settlers.

I have, &c.,

GODERICH.

[Enclosure.]

GENERAL ORDER No. 453.

Horse Guards, 16th May, 1827.

HIS MAJESTY is graciously pleased to hold out to Half Pay Officers the following encouragements to become Settlers in New South Wales and Van Diemen's Land, in addition to those detailed in the General Order of the 8th of June last.

General order
re concessions
to military
officers on
half pay as
settlers.

Officers of all Ranks on Half Pay are eligible to enjoy the advantages, offered by the said General Order, as well as those held out by the present Order, and they shall not be required to sell their Half Pay or make any Deposit as Security, the intention being that they shall retain their Half Pay and obtain Grants of Land without Purchase, subject, however, to the Conditions hereinafter specified, viz.

The remission of Quit Rent shall take place for a certain number of years beyond the average period, which is prescribed in the case of ordinary Settlers, according to the following scale:—

Officers, who have served Twenty years and upwards, to be exempted from all Quit Rent.

Officers, who have served Fifteen years and upwards but short of Twenty years, to be exempted from Quit Rent for the first Twenty years.

Officers, who have served Ten years and upwards but short of Fifteen years, to be exempted from Quit Rent for the first Fifteen years.

Officers, who have served Seven years and upwards but short of Ten Years, to be exempted from Quit Rent for the first Ten years.

* Note 104.

1827.
3 Aug.

General order
re concessions
to military
officers on
half pay as
settlers.

No Officer to be eligible under Seven years Service, nor any who cannot produce satisfactory testimonials of good conduct and unquestionable character.

In other respects, the Conditions, on which the Grants are made, to be similar to those which are now in operation in New South Wales.

The Officer, to whom Land is granted, shall enter into a bond that he or his family shall reside for at least Seven years in the Settlement; and the Grant shall not be allowed to be sold by him, until he shall be reported to have expended upon it a Capital equal to half its value, as that value was estimated when the Grant was made.

For instance, supposing the Grant to be 200 acres at the estimated value of 5s. per acre, the individual will not be allowed to sell it until he shall be reported to have expended £25 upon it. In the event, however, of his death taking place before the expenditure of Capital, already alluded to, the Grant will be continued to his heirs, but subject to the fulfilment of the Conditions under which he himself held the Grant.

The quantity of Land to be received by Officers will be in the same proportion to their Capital as in the case of ordinary Settlers; but, until an accurate valuation has been made of the Lands throughout the Colony, and an average price shall be fixed for each Parish, it is not possible for the Colonial Department to fix the quantity of Land, which any Individual may be able to obtain in proportion to his Capital.

The quantity of Land to be granted must depend entirely upon the value, which that Land, either from local circumstances or from its peculiar character, may possess, and this as must be evident can only be determined in the Colony.

The Officer, who may avail himself of this offer, will be required to provide for his own passage and that of his family to the Colony.

The Ordinary Rates of Passage are the following, as far as can be collected from the best sources of information, which have been applied to:—

To New South Wales:— Cabin, £94 10s. 0d.; Steerage, £40 0s. 0d.
To Van Diemen's Land:—Cabin, £84 0s. 0d.; Steerage, £35 0s. 0d.
Everything supplied to the Passengers except Bedding. £10 is deducted from Cabin and £5 from Steerage Passage in case of a Man and his Wife occupying one Birth.

Children of 14 years pay the same as Adults. From 9 to 13, $\frac{3}{4}$ rds. 5 to 8, $\frac{1}{2}$. 2 to 4, $\frac{1}{4}$.

Heavy Goods, £4 per Ton. Measurement Goods, £5 do. In the Hold.

By His Majesty's Command,

HENRY TORRENS, Adjutant General.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 44, per ship *Florentia*; acknowledged by Governor Darling, 31st January, 1828.)

Sir,

Downing Street, 3rd August, 1827.

With the view of affording to the Attorney General that efficient assistance in carrying on the duties of his Office, which the extent and importance of them appear to require, and in

Assistance
provided for
attorney-
general.

order that a Person may be on the spot, properly qualified to discharge those functions in case of the death or unavoidable absence of Mr. Baxter, the present Attorney General, it has been deemed expedient to separate the two Offices of Solicitor General and Commissioner of the Court of Requests, which have heretofore been united in one person; and I now beg to acquaint you that The King has been pleased to appoint John Sampson, Esqr., to be His Majesty's Solicitor General; to whom you may assign a Salary at the rate of £800 pr. annum.

1827.
3 Aug.

Separation of
legal offices.

Appointment of
J. Sampson as
solicitor-
general.

In signifying to you this arrangement, I do not think it necessary to refer more particularly to the ease of Mr. Holland, whom you have already been informed had been nominated to the above situations, than to observe that, as that Officer will now only retain the Office of Commissioner of the Court of Requests and consequently be relieved from a large portion of his labour and responsibility, whilst his Emoluments will remain undiminished in amount, I consider the arrangement in question will be no less conducive to his comfort than the Appointment of Mr. Sampson as Solicitor General will be advantageous to the Interests of the publick Service.

J. Holland to be
commissioner
of court of
request.

I have, &c.,

GODERICH.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 79, per barque Faith; acknowledged by Sir George Murray, 30th August, 1828.)

My Lord,

Government House, 3rd August, 1827.

I have been honored within these few days with the receipt of your Lordship's Dispatch, No. 6 of the present year, transmitting the copy of a letter from the Under Secretary of State for the Home Department in explanation of the 8th Section of the 4th Geo. 4th, chap. 84, with respect to the Assignment of Prisoners of the Crown.

Despatch
acknowledged.

As the Australian Newspaper had disputed the right of the Government to interfere with Assigned Servants, and a man of the name of *Matthews* has lately protested against the power exercised by the Magistrates of removing his servants, who had been taken from him on complaint of their being ill fed and improperly treated, it appeared to me a convenient opportunity of publishing, for the information of the Inhabitants, the opinion of the Secretary of State for the Home Department (under whose direction the Act in question is supposed to have been framed) as to the powers delegated to the Governor by the 8th Section more immediately alluded to.

Control by
government
of assigned
servants
contested.

I do myself the honor to enlose for your Lordship's information a copy of the Government Notice, which was prepared and issued in consequence, one of the objects being to apprize the

Regulations
re assigned
servants.

1827.
3 Aug.

Regulations
re assigned
servants.

Opinion of
chief justice
re control of
assigned
servants.

Masters of Convicts of the conditions, on which they have hitherto been assigned to them (Governor Macquarie's Regulations on this head, which are numerous, never having been rescinded), so as to prevent the embarrassment which would arise from their supposing they had been assigned unconditionally, as well to give them to understand that the Assignments would continue to be made under the same conditions as hitherto.

Immediately after the *Notice* appeared in the Gazette, I received a letter from the Chief Justice, of which I enclose a Copy, stating, as I consider, contrary to the opinion communicated to me in your Lordship's Letter that the Governor is not competent to annex conditions to the assignment of Convicts.

It is my intention to bring the matter under the consideration of the Executive Council in the first instance, and, should it appear necessary, to prepare a Bill embodying the conditions, under which convicts will in future be assigned, in order to its receiving the sanction of the local Legislature.

In the meantime, I take the liberty of forwarding for your Lordship's information the *Australian Newspaper** of this day, which enters at considerable length into the question and expresses, as it generally does, sentiments similar to those of the Chief Justice.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

GOVERNMENT NOTICE.

Colonial Secretary's Office, 30th July, 1827.

AN Individual, whose servants had been returned to Government by an Order of one of the Benches of Magistrates, having expressed a doubt as to the power of the Bench to remove his servants, the Governor, in order to prevent any misunderstanding on a point of so much importance to the Inhabitants and the Prisoners of the Crown, avails himself of this opportunity to state that it has been signified by the Right Honorable the Secretary of State for the Home Department "that the 8th Section of the 5th Geo. 4. chap. 84, neither precludes or was intended to preclude the local Government from making any Regulation, which may be necessary respecting the re-assignment of the service of Convicts," and further "that the Governor, who is empowered to assign that service, is fully competent to modify his assignment in such manner as justice and good policy may require."

His Excellency, therefore, desires it to be understood:

1st. That Persons receiving Prisoners of the Crown will continue liable, according to established practice, to be deprived of the service of any such *Prisoners* by order of any Bench of Magistrates, on proof of any such Prisoner being insufficiently fed or clothed, or otherwise improperly treated, or being allowed to work out, or to be at large.

2nd. That no Person is to assign to another a Prisoner of the Crown from the Governor, until he or she shall have obtained His Excellency's sanction.

* Note 115.

Government
notice re
regulations for
assignment
of convicts.

3rd. That the Governor still reserves to himself the right of granting Tickets of Leave or other indulgence to the well conducted Prisoners in the service of the Settlers and Inhabitants.

1827.
3 Aug.

Government
notice *re*
regulations for
assignment
of convicts.

In thus adverting to the conditions, under which Prisoners of the Crown will continue to be assigned, and which will be considered binding on all persons receiving them, His Excellency is desirous to state that, with a view of accommodating and relieving the Settlers and Inhabitants, the Government will, under the conditions of Assignment above specified, receive as hitherto such of their servants as they may be desirous of returning to the Public Service.

By His Excellency's Command,

ALEXANDER MCLEAY.

[Enclosure No. 2.]

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

Sir,

Sydney, 1st August, 1827.

I have read in the Sydney Gazette of this day's date a Government Notice, intended to remove a doubt which appears to have been raised by some Individual as to the jurisdiction of a Bench of Magistrates over the case of Prisoners, assigned to Settlers under the circumstances set forth in the Notice; and I beg leave to state to your Excellency that the doubt in question is one of law, which the Courts of the Colony only are competent to determine. The question is whether by any law in force the Magistrates can take cognizance of the complaints of Prisoners in the service of Settlers for any of the causes specified in the first Article of the Government Notice, and whether there is any law authorizing them to remove such prisoners from the service of their Masters. The New South Wales Act (4 Geo. 4, chap. 96, Sect. 19) authorizes the Magistrates to take cognizance of complaints, in certain cases of a Civil nature, against prisoners; but is silent as to complaints of a similar kind by or in behalf of Prisoners against their Masters; and I do not think it is in the power of the Government to supply the defects of the Act of Parliament, and to give the Magistrates of this Colony a jurisdiction, unknown to the Laws of England and not sanctioned by any ordinance of the Local Legislature. This point has been incidentally determined by the Supreme Court; and I am sure it was not Your Excellency's intention to oppose to the decision of the Court the opinion of Government upon a pure point of Law, namely, the jurisdiction of the Magistrates of the Colony. I would respectfully suggest to your Excellency, if it be deemed expedient that the Magistrates should exercise the Authority alluded to, that a Law for such purpose should be passed by the Legislature of the Colony.

Opinion of
F. Forbes *re*
control of
magistrates
over assigned
convicts.

I have, &c.,

FRANCIS FORBES, Chief Justice, N.S.W.

1827.
3 Aug.

[Enclosure No. 3.]

[*This was a copy of the issue of the "Australian" newspaper,* dated 3rd August, 1827.*]

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 45, per ship *Florentia*; acknowledged by Governor Darling, 31st January, 1828.)

4 Aug.

Sir,

Downing Street, 4th August, 1827.

Appointment of
J. Dowling
as judge of
supreme court.

I do myself the honor to acquaint you that, in consequence of the great increase of business in the Civil and Criminal Court of Judicature in New South Wales, and the necessity of providing for the due execution of the same, The King has been pleased to appoint an additional Judge for the Service of that Colony, who will take rank in the Supreme Court next to the Chief Justice. It is only necessary for me to add that James Dowling, Esqr., has been selected to fill that situation with a Salary at the rate of £1,500 per Annum, commencing from the date of his embarkation, which I trust will not be delayed beyond the end of September next.

Mr. Dowling has received an advance of six months Salary to enable him to defray the expenses of his Passage and outfit.

I have, &c.,

GODERICH.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 80, per barque *Faith*.)

My Lord,

Government House, 4th August, 1827.

I have the honor to transmit for your Lordship's information the Monthly Returns for April and May last of the Troops stationed in this command.

I have, &c.,

RA. DARLING.

[Enclosure.]

[*Copies of these returns are not available.*]

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 81, per barque *Faith*; acknowledged by right hon. W. Huskisson, 24th January, 1828.)

My Lord,

Government House, 4 August, 1827.

Having, in consequence of your Lordship's Dispatch No. 75/1826, called upon Colonel Stewart to refund the sum, which had been issued to him on account of Forage in his situation of Lieut. Governor, I do myself the honor to transmit to Your Lordship the copy of a letter, which the Lieut. Governor has

Forage
allowance to
W. Stewart.

addressed to me on the subject; and I beg to recommend that he may be permitted to retain the allowance to the end of the last year.

1827.
4 Aug.

I am bound to repeat, in justice to Colonel Stewart, that no man can be more zealous in discharge of his duty, and that from his knowledge of public business he has proved himself extremely useful in this Government.

Testimony
in favour of
W. Stewart.

I have, &c.,

RA. DARLING.

[Enclosure.]

LIEUT.-GOVERNOR STEWART TO COLONIAL SECRETARY MACLEAY.

Sir, Park Street, Sydney, 3rd July, 1827.

I have now the honor to acknowledge the receipt of your letter of the 23rd February last, communicating to me that my Lord Bathurst had objected to my receiving a Forage allowance for two Horses as the Lieutenant Governor of this Colony, and ordering me to refund the portion of that allowance which I had previously received for last year.

Protest of
W. Stewart
against order
for refund
of forage
allowance.

Under these circumstances, therefore, I feel myself called upon to explain that, when I first applied for this allowance, I not only understood that it had been previously drawn from the Colonial Treasury by my predecessors in Office (who were never employed in aiding the Colonial Government in any respect), but, about that period also, I was repeatedly required to proceed to Parramatta and elsewhere as the President of different Boards of Enquiry, ordered to investigate cases connected with the Civil Government of the Colony. In order, therefore, to enable me promptly to obey His Excellency the Governor's Orders on those occasions, and also to avoid the troublesome alternative of applying for travelling expenses when so employed, I was induced to solicit the Forage allowance for two horses in lieu thereof; and His Excellency, being obviously convinced of the Justice of the Claim, gave immediate orders that the Forage allowance in question should be regularly issued, as signified in your letter to me bearing date the 30th March, 1826.

In consequence of your late communication, however, I have drawn no part of the Forage allowance in question for the present year; but, as your letter goes further and gives it as His Lordship's decision that the portion of this allowance, issued to me for last year previous to the receipt of His Lordship's order, should be refunded to the Colonial Treasury, I feel it necessary in common justice to myself most respectfully to submit this part of the Order for re-consideration.

On receiving your letter of the 31st of March, 1826, conveying to me His Excellency's approval that I should draw this Forage allowance for two, I immediately provided myself with three

1827.

4 Aug.

Protest of
W. Stewart
against order
for refund
of forage
allowance.

additional Horses for the performance of the public duties required of me; and I actually expended considerably more than the allowance made to me in feeding those Horses for the Public Service; and, in consequence of its discontinuance, I have been subjected to the risk of disposing of them to disadvantage. I cannot, therefore, but rest fully satisfied that, when it is explained to my Lord Bathurst and to His Excellency the Governor that the allowance has been bona fide so expended, it will at once be self apparent to them that I cannot in common justice be called upon to refund money, which has been expended in keeping Horses for the public Service; and, were I even to do so, it would obviously be taking money from my pocket, which I had never received, and which, had it not been granted me in the shape of Forage allowance, I could very justly have claimed for Travelling Expenses incurred while employed in the discharge of my Civil duties, and which I was at all times ready and anxious to execute promptly, in order to afford my best support to the local administration, which has had too many difficulties to encounter and has at the same time all the means to organize for surmounting them. If I had any public money in my hands, I should most readily have repaid it; but, as that is not the case, and as I have implicitly obeyed the Order and have ceased drawing the Forage from the commencement of the present year, I trust it will not be expected that I should refund a trifling allowance to Government, from which I have derived no advantage.

I have, &c.,

WILLIAM STEWART.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 82, per barque Faith.)

My Lord,

Government House, 4th August, 1827.

Arrival of
A. M. Baxter.

I have the honor to report to your Lordship that Mr. Baxter, the Attorney General, has arrived and will immediately undertake the functions of his Office.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO SECRETARY OF STATE.

(Despatch per barque Faith.)

Sir,

Government House, 4th August, 1827.

Transmission
of copies of
Sydney Gazette.

Conformably to my Instructions to this effect, I have the honor to transmit for your information the *Sydney Gazettes* from the 1st of June to the 3rd Instant.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

1827.
4 Aug.

(Despatch marked "Private." per barque Faith.)

Dear Sir, Government House, 4th August, 1827.

Captain Dumaresq, having since his letter, which accompanied my Despatch No. 77, received information from a friend at the Horse Guards that he was to be placed on Half Pay, has in consequence written to me on the subject, and I send a Copy of his Letter for your consideration. It is stated in Lord Bathurst's Despatch No. 10 that Captain Dumaresq's application to retire on Half Pay will not be sent in to the Adjutant General, until it is ascertained whether he accepts the appointment of Civil Engineer. He has declined it from a conscientious and very commendable motive, feeling he is not qualified for it; and, if he has been placed on half pay in the expectation of his accepting the appointment, there will I hope be no objection to what he proposes. He has nearly completed the full term required by the Regulations, and I should hope in the circumstances of his case he will be allowed the same indulgence as if he had served twenty years.

Reported
reduction of
W. Dumaresq.

I remain, &c.,

RA. DARLING.

[Enclosure.]

CAPTAIN DUMARESQ TO GOVERNOR DARLING.

Sir, Sydney, 3rd August, 1827.

Since my former communication of the 27th Ultimo* declining the appointment of Civil Engineer, I beg to inform your Excellency that I have received a private intimation from the Horse Guards, which leads me to expect that my application to retire on Half Pay will be acted on, though I have not succeeded to the situation of Deputy Surveyor General, which appointment was made the condition of my retirement.

Application
to become
a military
settler.

Should I now be placed on Half Pay, it will be attended with much embarrassment to me, which I am not aware can be remedied in any other way than by the sale of my Commission on the same terms as are held out to Officers of twenty years Service wishing to emigrate to these Colonies, viz. the full price of the Commission and a Grant of Land free of Quit Rent. My service in the Army exceeds 18 years; and, if I might be allowed credit for the period I was at the Royal Military College, as in the case of Officers of the Navy, I should have a claim under the present Regulations to the Indulgence I have now solicited.

I have, &c.,

WM. DUMARESQ, Capt'n. Royal S.C.

* Note 116.

1827.
5 Aug.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 46, per ship *Florentia*; acknowledged by Governor Darling, 31st January, 1828.)

Sir,

Downing Street, 5th August, 1827.

Approval of
regulations
re tickets
of leave.

I have received your dispatch, No. 2 of the 2nd of January last, transmitting a Copy of the Regulations, under which it is proposed to grant Tickets of Leave in future to such of the Prisoners, who, by an uninterrupted course of good behaviour, may have rendered themselves deserving of this indulgence; and I do myself the honor of acquainting you in reply that the modifications, which you have introduced in the former Regulations upon this subject, do not appear, as far as I am at present aware, to be liable to any objection.

I have, &c.,

GODERICH.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 47, per ship *Florentia*; acknowledged by Governor Darling, 31st January, 1828.)

6 Aug.

Sir,

Downing Street, 6th August, 1827.

Claim of
R. Travers
to additional
allowances.

I have received your dispatch, No. 31 of the 23rd of February last, relative to a claim on the part of Lieutenant Travers, one of the Officers of the Veteran Companies, to an additional allowance of 4s. per day under the Army Regulations in consequence of his having charge of a Party of Convicts, employed in making and repairing Roads in Van Diemen's Land; in reply to which, I do myself the honor to acquaint you that, as these Companies were formed for the purpose of being employed as "Superintendents and Overseers" of Convicts, and as the duty performed, vizt. that of having the Superintendence of a Road Party was exactly a part of the employment for the due performance, of which Lieutenant Travers received his present Commission (supposing the Party to be Convicts), His Majesty's Government are of opinion that the additional Allowance in question ought not to be granted.

As, however, the requiring repayment from Lieut't Travers of such part of that allowance, which he may have already received, may occasion great inconvenience to him, I have written to Lieutenant Governor Arthur authorizing Lieut't Travers to retain the same, directing the allowance to be discontinued only from the date at which he may receive the Dispatch in which it is disallowed.

I have, &c.,

GODERICH.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 83, per ship Elizabeth.)

1827.
6 Aug.

My Lord, Parramatta, 6th August, 1827.

I do myself the honor to acquaint your Lordship that I forwarded to Lieut. Governor Arthur, by an early opportunity after their receipt, the duplicate Instructions from the Lords Commissioners of His Majesty's Treasury for keeping the accounts of the Revenue and Expenditure of these Colonies, which accompanied your Lordship's Dispatch No. 59, and I have now the honor to enclose for your Lordship's information a copy of the letter, which I have received from the Lieut. Governor in reply to the Communication made to him.

Instructions
sent to
G. Arthur re
accounts in
Tasmania.

I have, &c.,

RA. DARLING.

[Enclosure.]

LIEUT.-GOVERNOR ARTHUR TO GOVERNOR DARLING.

Sir, Government House, 15th June, 1827.

I have the honor to acknowledge the receipt of your Excellency's letter of the 30th March, transmitting Duplicate Dispatch from Earl Bathurst with copies of Instructions from the Lords Commissioners of His Majesty's Treasury, relative to keeping the Accounts of the Revenue and Expenditure of these Colonies.

I have referred the Instructions to the Colonial Auditor in order that they may be carried into effect with the least possible delay, and have directed that, if practicable, the accounts may be made up according to the form prescribed from the commencement of the present year.

I have, &c.,

GEO. ARTHUR.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Florentia; acknowledged by Governor Darling, 31st January, 1828.)

My dear Sir, Downing Street, 7th August, 1827.

7 Aug.

Mr. Benjamin Burne, the subject of the inclosed paper, who is qualifying himself for the profession of a Surveyor, has been recommended very strongly to me by Sir Herbert Taylor; at whose request I beg to bring Mr. Burne's name thus favorably under your notice, and to add that I shall be much gratified, in case the youth should determine upon seeking employment in New South Wales after having pursued his studies here a sufficient time, if you should have an opportunity of appointing him to any vacancy among the assistant Surveyors, which may hereafter occur in that Colony.

Recommendation of
B. Burne as
surveyor.

I remain, &c.,

R. W. HAY.

1827.
7 Aug.

Statement of
qualifications
by B. Burne.

[Enclosure.]

I AM 22 years of age, and have been 7 years in an eminent Land Surveyor's Office. I am acquainted with the theoretical Part of the Land Surveying, and am now under a gentleman of great practical knowledge, who has undertaken to make me perfect in the Field in a few weeks. I have a general knowledge of the division of Tytles, and of the Land Surveying in its various branches.

BENJAMIN BURNE.

27 July, 1827.

GOVERNOR DARLING TO EARL BATHURST.

(Despatch No. 84, per ship Elisabeth; acknowledged by right hon. W. Huskisson, 28th April, 1828.)

My Lord,

Parramatta, 7th August, 1827.

I have the honor to acknowledge the receipt of your Lordship's Dispatch No. 89 of last year, and am sorry to find that I did not state more distinctly, than I appear to have done, that I had no intention of assigning any special remuneration to the Gentlemen composing the "Board for General Purposes." It is only Justice to these Gentlemen to acquaint your Lordship that their exertions have been very cheerfully and successfully employed without any Expectation of reward.

I also regret to find that I appear to have misled your Lordship with respect to the appointment of an Engineer. I had no intention of applying for a second Engineer, but to request that a competent person might be sent out to fill that situation, as the Gentleman, I had temporarily placed in it, had proved inadequate to the duty, and Captain Dumaresq, the only person here who appeared to me at all competent to it, was not disposed to undertake it and was besides, at that time, otherwise employed.

While on this subject, I must request your Lordship will sanction the issue of the salary to Mr. Kinghorne (the person above alluded to, who acted for a short time as Civil Engineer) at the rate of £800 a year, as recommended by the Board, whose report accompanied my Dispatch No. 48/1827, as likewise the remuneration of Captain Dumaresq of 20s. a day as proposed in the said Report, that Officer, as I have already stated, having continued to act solely to prevent the embarrassment which would be occasioned by his resignation at this moment.

In a Dispatch, subsequent to that to which I have now the honor to reply, your Lordship is pleased to fix the salary of the Civil Engineer at £500 a year. I should be very glad if a person competent and suitable in other respects can be procured at this

Board for
general
purposes.

Second
engineer
unnecessary.

Salary of
acting civil
engineers.

Salary fixed
for civil
engineer.

Salary, though I should doubt that a qualified Gentleman, having a knowledge of the expence of House rent and living in this country, would come out on any such terms.

I have, &c.,

RA. DARLING.

1827.
7 Aug.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship *Florentia*: acknowledged by Governor Darling, 15th February, 1828.)

Sir,

Downing Street, 9th August, 1827.

9 Aug.

I am directed by Viscount Goderich to transmit for your information the inclosed Copy of a letter from the Secretary to the Admiralty, in answer to a communication which was made to that Department on the subject of the demands, made upon the Colony under your Government for Stores for His Majesty's Ships occasionally resorting there.

Supply of
stores to
H.M. ships
visiting Sydney.

Although it appears that directions will be given to the Admiral on the East India Station "to press as little as possible on the Stores at Sydney," yet Lord Goderich thinks it necessary to require that in every case, in which similar Stores may be applied for, you will immediately forward to the Secretary of State an account of the value of the same, specifying each article separately, together with an acknowledgement on the part of the Naval Officer, into whose charge they may have been delivered, in order that repayment may be obtained from the Naval Department at home, and the amount passed to the credit of the Colonial Government. Lord Goderich further desires me to request that a similar account may be made out of the Stores, adverted to in your letter of the 2nd March, and that you will be pleased to transmit the same to me for his Lordship's information.

I am, &c.,

R. W. HAY.

[Enclosure.]

SECRETARY CROKER TO UNDER SECRETARY HAY.

Sir,

Admiralty Office, 8 August, 1827.

Having laid before the Council to His Royal Highness the Lord High Admiral your letter of the 23rd of last month, transmitting, by desire of Viscount Goderich, Copy of a Letter from the Governor of New South Wales on the subject of the demands made upon that Colony for Stores for His Majesty's Ships, which occasionally resort there, I am to acquaint you for Lord Goderich's information that the Council to His Royal Highness have desired the Admiral on the East India Station to press on the

1827.
9 Aug.

Stores at Sydney as little as possible, and they have also directed the Navy Board to enquire whether there be any means of forming a small depot of Stores there without any increase of expence to the Public.

I am, &c.,
J. W. CROKER.

UNDER SECRETARY HAY TO GOVERNOR DARLING.*

10 Aug.
Transmission
of application
for land.

Sir,

Downing Street, 10 August, 1827.

I am directed by Viscount Goderich to transmit to you the inclosed Copy of an Application, which has been received from Mr. Cunningham, Surgeon of the Royal Navy, on the subject of a reserve of Land, consisting of 1,300 Acres, which he is desirous of having conferred upon him as a new Grant. I am at the same time to acquaint you that his Lordship sees no objection to a compliance with Mr. Cunningham's request, provided he has Capital sufficient, according to the late Regulations, to cultivate the same; you will, therefore, be pleased to do what is right on this occasion, understanding, however, that Lord Goderich has no intention of exempting the Party in question from any of those conditions, to which Grantees generally are now subjected.

I have, &c.

R. W. HAY.

[Enclosure.]

SURGEON CUNNINGHAM TO UNDER SECRETARY HAY.

27 Lower Belgrave Place,

Pimlico, 2nd Aug., 1826.

Sir,

Request for
conversion of
reserve to land
grant by P.
Cunningham.

I beg leave most respectfully to solicit your attention to the following statement. In 1824, I carried out a letter from the Colonial Office to the Governor of New South Wales, recommending me for a grant of land in that Colony, which procured me a reservation of twelve hundred acres for eighteen months, that was afterwards converted into a grant. Adjoining this grant, I had thirteen hundred and forty acres also measured to me, for which I was to pay a yearly rental, and at the termination of three years have the option of purchasing the same at a valuation, according to the tenor of an order then issued. The amount of land hitherto granted to every Officer of my profession or of my rank in the Naval Service, who carried out recommendatory letters from the Colonial Office, has been two thousand acres, even subalterns in the army never having received less than this; and the only reason, I believe which prevented me having the same allotment conferred on me at the time, was the mistake (as I conceived it to be) of giving me the land as an *occupation*

* Note 6.

reserve, instead of a grant; and my object in troubling you at this instant is to most respectfully request you will be pleased to permit either eight hundred acres of this reservation or the whole of the thirteen hundred and forty acres to be conferred upon me as a new grant, in conformity with the recent regulations regarding grants to half pay Officers, in order that I may be placed on an equality with all other officers of my rank, who have previously had grants in the Colony. May I take the liberty of respectfully remarking that the converting of the reserve for purchase into a grant only puts off the payment of the purchase Money for a few years, because by the tenor of the present grants all lands in the Colony are now actually purchased, only requiring the purchase money or the interest of it in shape of quit rent to be paid at the end of seven years, instead of immediately assimilating it in fact to the system of clearing leases in America and of improvement leases in England, the rent not being demandable until the land is made of sufficient value to pay it. I have already expended £1,100 in stock and farming expences, and my stock alone by its increase now equals that sum. I am also about taking out a supply of agricultural implements and of Saxon merinos to the value of several hundreds more, while fourteen Convicts and free labourers were maintained upon my land, according to the letters of my friend, Lt. Ogilvie, R.N., who is managing my affairs in my absence. I beg leave farther respectfully to observe that I have been in His Majesty's Service for a period of nearly seventeen years, and with your approbation would most willingly assent to your submitting my application to the decision of His Excellency Gov. Darling, to be complied with only in the event of my statement being correct, in case you should not feel inclined to decide upon it yourself without inquiry in the Colony.

I am, &c.,

PETER CUNNINGHAM, Surgeon, R.N.

1827.
10 Aug.

Request for
conversion of
reserve to land
grant by P.
Cunningham.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 85, per ship Elisabeth.)

My Lord,

Parramatta, 10th August, 1827.

I have the honor to forward herewith, in reference to my Despatch of the 11th of May, a letter, addressed by Mr. Henry Dangar to the Earl Bathurst on the subject of his suspension from his situation as Assistant Surveyor.

Protest of
H. Dangar
against his
suspension.

In my first letter, I confined my Communication to the Report of the Land Board, without adding any of the documents referred to, considering that the Report contained a comprehensive statement of the Case.

1827.

10 Aug.

Conduct of
H. Dangar and
P. McIntyre.

In condemning Mr. Dangar, I beg it may not be supposed that I have any desire to justify Mr. McIntyre, who appears to have entertained unreasonable expectations, and to have acted improperly in some respects. Mr. McIntyre is, however, a private Individual, and may perhaps be excused for endeavouring to make the best arrangements he could for himself and his employer. But the case of an Officer is different, who attempts to render his public situation subservient to his private interest.

It is not my object at present to follow Mr. Dangar through the long statement he has prepared. I shall confine myself to one or two points, which, I trust, will be sufficient to prove that he has not been dealt with unjustly or with undue severity.

Illegal
purchases of
land orders by
H. Dangar.

It will be seen, on reference to page 11 of Mr. Dangar's letter, that he admits the purchase of Mr. Dunn's land, but of course endeavours to palliate and excuse it. The Government had thought it necessary to declare that individuals receiving land should not be at liberty to alienate it for a given number of years, and further that they should expend a sum proportionate to the value in its improvement and cultivation; and it was the immediate duty of the Officers of the Survey Department to see these Regulations carried into effect; notwithstanding which, Mr. Dangar, anxious to profit of every means, however inconsistent with his duty, to extend his possessions in the Quarter where he intended to settle, purchases from Messrs. Dunn and Rapsey *Orders* which they had received for land, not having even selected, much less possessed or improved the land, as required by Regulations; and, to conceal this surreptitious transaction, Mr. Dangar inserts the names of Messrs. Dunn and Rapsey in the Map, with a view of excluding other applicants, proving at once his consciousness of the fraud he had practised. Mr. Dangar would appear to take some credit for being the first to mention his purchase of these orders. He was aware, however, at the time, that Mr. McIntyre was prepared to come forward with the fact, and therefore can claim no merit for the disclosure.

I beg to annex an Extract from the Surveyor General's Report on this point for your Lordship's information. I am at the same time persuaded Mr. Oxley never intended to defend an illicit act on the part of a Public Officer, on the ground of its common occurrence amongst private individuals, more especially when it was the immediate duty of such Officer to prevent proceedings of that nature. Individuals may endeavour to evade laws and regulations; but, when the Officers of the Government, whose

duty it is to check such proceedings, not only connive at them in others, but become principals themselves, it stamps them at once as unfit for any public trust.

1827.
10 Aug.

I now beg leave to refer your Lordship to an extract from the Report of the Land Board on this point, which I had the honor to transmit with my Despatch No. 39. Had I referred to it before I began my letter, your Lordship would have been spared the perusal of the comments I have presumed to trouble you with. They, however, prove a marked coincidence of sentiment on the view taken of the matter.

I shall trouble your Lordship only on one other point, which is, the circumstance of Mr. Dangar having proposed to waive his right to a certain piece of land, provided he could have Mr. McIntyre's assurance that he would not apply, either for himself or others, for some unlocated land in the neighbourhood of that he had taken possession of, in order I presume that he might not suffer any interruption to his further views; though he admits, in the accompanying letter, in which he makes this overture to Mr. McIntyre, that one half of the land, which he wishes to stipulate should be left, would be as much as he could ever require to purchase.

Overture made
by H. Dangar
to P. McIntyre.

I do myself the honor to transmit a copy of Mr. Dangar's letter to Mr. McIntyre, above referred to, as also an extract of Mr. Oxley's Report, in which he says "I cannot but consider that Mr. Dangar as a Surveyor acted irregularly and improperly, but not corruptly, as respected Mr. McIntyre. His overture to Mr. McIntyre affected the public Interest by impeding free 'Selection' etc.

Comment on
H. Dangar's
conduct by
J. Oxley.

I will not dwell further on the subject, but leave your Lordship to judge of Mr. Dangar's conduct and claim to attention from the points, now immediately brought under your Lordship's consideration. They appear to me to establish beyond all doubt Mr. Dangar's unjust exertions to acquire Land, even at the expence of those Regulations, which it was his immediate duty to enforce, as in the case of the purchase of *Orders for Land* from Dunn and Rapsey, and by the system of jobbing he appears to have practised, as may be seen by his overture to Mr. McIntyre, and explained in Enclosure No. 4, and the other means he resorted to of making his public situation instrumental to his private advantage, to the prejudice of Individuals and the general interests of the Colony.

Conduct of
H. Dangar.

I cannot close my letter without imputing some degree of blame to the Surveyor General for permitting Mr. Dangar to remain on duty at Hunter's River, when he must have been aware

1827.
10 Aug.
Resignation
proposed by
H. Dangar.

that his private concerns interfered with the proper discharge of his duty. I have stated, in my former letter, that Mr. Dangar wished to resign his appointment, when the investigation into his conduct was ordered, hoping no doubt to be allowed to retain the ample provision he supposed he had secured for himself and his brother. It was to defend this attempt, and deter others from any similar proceeding, that I adopted the measures, of which Mr. Dangar complains. Its justice, however, will I trust be confirmed by your Lordship.

I have, &c.,

RA. DARLING.

[Enclosures.]

List of
enclosures.

[The following letters and documents were enclosed with this despatch:—

- H. Dangar to Earl Bathurst, 21, vii, 1827.
- A. McLeay to J. Oxley, 17, iii, 1827.
- A. McLeay to H. Dangar, 29, v, '27; 13, x, '26; 2, viii, '27.
- H. Dangar to A. McLeay, 13, x, '26; 13, i, '27; 18, i, '27; 10, iv, '27; 9, vii, '27; 23, vii, '27.
- H. Dangar to J. Oxley, 4, ix, '26; 6, iv, '27.
- J. Oxley to A. McLeay, 8, ix, '26.
- H. Dangar to P. McIntyre, 19, vi, '25; 4, vii, '26.
- J. Oxley to H. Dangar, 10, iv, '27.
- Sir T. Brisbane to J. Oxley, 22, xi, '25.
- P. McIntyre to H. Dangar, 26, v, '25.
- Report of the Land Board, 28, ii, '27.
- Receipt for Land Sold, 13, v, '26.
- Government Public Notice, 10, xi, '25.
- H. Dangar to J. Morisset, etc., 12, iv, '27.
- H. Dangar's Affidavit, 27, vii, '27.
- Certificates of:—H. Gillman, 14, iv, '27; F. Allman, 18, vi, '27; J. Oxley, 4, viii, '27.

Copies of these papers will be found in a volume in series II.]

GOVERNOR DARLING TO SECRETARY OF STATE.

(Despatch per ship Elisabeth.)

Sir,

Parramatta, 10th August, 1827.

Transmission
of copies of
Sydney Gazette.

Conformably with my Instructions to this effect, I do myself the honor herewith to transmit a Duplicate Series of the *Sydney Gazettes* from the commencement of the present year to the end of June last.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

1827.
10 Aug.

(Despatch per ship Elisabeth.)

Sir,

Parramatta, 10th August,* 1827.

I beg leave to transmit a Complete Series of the following Colonial Newspapers from the Commencement of the present Year to the 30th June last, Vizt. Sydney Gazette, Australian, Monitor, and Gleaner.

Transmission of
newspapers.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Elisabeth.)

Sir,

Parramatta, 10th August, 1827.

Herewith I have the honor to transmit the "Blue Book" for the year 1826, together with the "Tables" for the month of July last, which are required to be forwarded by the Secretary of State's Circular Despatch of the 11th September, 1826.

Transmission of
returns.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Elisabeth: acknowledged by right hon. W. Huskisson, 29th April. 1828.)

Sir,

Parramatta, 13th August, 1827.

13 Aug.

I have the honor to acquaint you, in reference to the Authority, communicated in Earl Bathurst's Despatch No. 41/1825, to afford the necessary means for putting the Roman Catholic Chapel in a state fit for the performance of Divine Worship, that, the Government possessing no means which could be applied to this purpose, Tenders were in consequence called for, and, those received appearing most unreasonable, £5,800 having been demanded, I have felt it necessary to decline authorizing the undertaking. It appears the Roman Catholics themselves very properly attribute the present unfinished state of the Building to Mr. Therry, the late Chaplain, whose ostentatious design has been the cause of its not being completed. I have seen Mr. Power, the present chaplain, who appears satisfied with the reasons I have assigned for the Government declining to complete the Chapel; and I am happy to say that, as a means of removing in some degree the inconvenience to which the Catholics would be exposed from the want of a suitable place in Sydney for the performance of Divine Worship, the Archdeacon has been so good as to allow them to make use of part of one of the public School Houses, until their Chapel shall be in a state to afford

Tenders for
completion of
R.C. chapel.Temporary
accommodation
for R.C.
worship.

* Note 117.

1827
13 Aug.

Proposed
completion of
chapel by
J. J. Therry.

the accommodation required. Mr. Therry, who still continues here and who is extremely intemperate and offensive on all occasions, is, I understand, endeavouring to raise a subscription for the purpose of completing the Chapel, but I should doubt the possibility of his obtaining the necessary funds. I should have stated that he proposed undertaking the work himself on a reduced scale of £1,200 or £1,500 below the Tenders, which had been received. But, as I was satisfied this was merely to induce the Government to embark in the undertaking in the hope that having gone a certain length it would ultimately defray the whole Expense, I declined acceding to his proposal. Besides, it appeared to me that it would be highly improper on the part of Government to enter into a contract with a Clergyman for any such purpose.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Elisabeth.)

16 Aug.

Despatches
acknowledged.

Sir,

Parramatta, 16th August, 1827.

I have the honor to acknowledge your several letters, stated as per margin,* which arrived on the 11th instant by the Manlius, Convict Ship, and I shall do myself the honor to reply with as little delay as possible to those which require to be specially answered.

I have, &c.,

RA. DARLING.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Louisa; acknowledged by Governor Darling, 4th December, 1827.)

21 Aug.

Transmission
of warrant.

Sir,

Downing Street, 21st August, 1827.

The Revd. Mr. Smith having neglected to provide himself with the Warrant appointing him to a Chaplaincy in New South Wales previous to his departure for that Colony, I am directed by Viscount Goderich to transmit herewith the same to you, and to request that you will deliver it to Mr. Smith upon receiving from him the Sum of £2 7s. 6d., the amount of the fees thereon.

I am, &c.,

R. W. HAY.

[Enclosure.]

WARRANT APPOINTING AN ASSISTANT CHAPLAIN.

GEORGE R.

Warrant
appointing
E. Smith as
assist. chaplain.

TRUSTY and Well Beloved, We Greet you well. We, reposing especial Trust and Confidence in the Loyalty, Integrity and Ability of Our Trusty and Well Beloved Elijah Smith, Clerk,

* *Marginal note.*—5th, 5th, 5th, 6th, 13th, 13th April.

do hereby nominate and appoint him to be One of Our Chaplains within Our Colony of New South Wales, He, the said Elijah Smith, being a Priest in Holy Orders of the Established Church of England and Ireland. And it is Our Will that the said Elijah Smith shall hold such his Office during Our Pleasure, and no longer. And We do further direct and Command that the said Elijah Smith, so long as he shall retain his Office, shall officiate as a Minister of the Established Church aforesaid, at such places or place within Our said Colony, as the Venerable the Archdeacon for the time Being of the said Colony shall from time to time appoint; It being Our Will and Pleasure that the said Archdeacon shall commit to the said Elijah Smith such Spiritual charge within Our said Colony, as the said Elijah Smith shall appear to him best qualified to execute, and as may most effectually tend to the advancement of Religion and Virtue within Our said Colony.

1827.
21 Aug.

Warrant
appointing
E. Smith as
assist. chaplain.

Given at Our Court at St. James, this Twentieth day of June, One Thousand, Eight Hundred and Twenty Seven, in the Eighth Year of Our Reign.

By His Majesty's Command,

GODERICH.

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 48, per ship Hoogley; acknowledged by Governor Darling, 26th February, 1828.)

Sir,

Downing Street, 23rd August, 1827.

23 Aug.

I have received and laid before The King your dispatches of the dates and numbers mentioned in the Margin,* and I have the honor to acquaint you that the several Acts, therein referred to, passed by you and the Legislative Council of New South Wales in the months of February, July, and August, 1826, have received His Majesty's Approbation.

Approval of
acts of council.

The Titles and Numbers of these Acts are as follows:—

[Here followed the titles of acts† numbered 1 to 5, 7 Geo. IV.]

I have, &c.,

GODERICH.

UNDER SECRETARY HAY TO GOVERNOR DARLING.‡

Sir,

Downing Street, 23rd August, 1827.

The Bearer of this letter, Lieutenant John Hawkins, having obtained His Majesty's permission to quit the United Kingdom for the purpose of Settling in New South Wales under the arrangement, detailed in the General Order of the 16th of

Recommend-
ation of
J. Hawkins as
officer settler.

* Marginal note.—No. 50, 27 July; No. 54, 31 Augt.; No. 65, 10 Sept., 1826.

† Note 118. ‡ Note 6.

1827.
23 Aug.
Recommend-
ation of
J. Hawkins as
officer settler.

May, 1827, a Copy of which was transmitted to you in Lord Goderich's dispatch of the 4th instant, I am directed by his Lordship to desire that you will make to Lieutenant Hawkins a Grant of Land in proportion to his Capital, and that he may be admitted to the benefits to which an Officer, emigrating to the Colony under such circumstances, will be entitled.

I have, &c.,
R. W. HAY.

UNDER SECRETARY HORTON TO GOVERNOR DARLING.*

Dear Sir, Downing Street, 23rd August, 1827.

Recommend-
ation of
R. Ormiston
as settler.

I have received the inclosed letter from Sir Edward Kerrison in favor of the Bearer, Robert Ormiston, who is about to proceed to New South Wales as a Settler; and I shall be much obliged to you to give him any facilities in furtherance of his views, which it may not be inconsistent with regulations to grant.

I am, &c.,
R. W. HORTON.

[Enclosure.]

[*A copy of this letter is not available.*]

VISCOUNT GODERICH TO GOVERNOR DARLING.

(Despatch No. 49, per ship Hoogley; acknowledged by Governor Darling, 26th February, 1828.)

2 Sept.
Reduction of
sentences on
J. Large and
B. Smith.

Sir, Downing Street, 2nd September, 1827.

His Majesty having been graciously pleased to reconsider the cases of John Large and Edward Smith, who were Capitally convicted at the last Lent Assizes for the County of Kent of destroying Trees, whose sentences were commuted to Transportation for life, and who were sent out to New South Wales in the Ship Champion, which sailed in May last, and His Majesty having been further pleased to reduce the term of these Prisoners' Transportation to Seven Years, I transmit to you herewith a Warrant under the Royal Sign Manual for that purpose, and I request that you will take measures for enabling the Prisoners in question to receive the benefit thereof.

I have, &c.,
GODERICH.

[Enclosure.]

[*A copy of this warrant is not available.*]

* Note 6.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Hoogley; acknowledged by Governor Darling,
26th February, 1828.)

1827.
2 Sept.

My dear Sir, Downing Street, 2nd September, 1827.

I beg to inclose for your information the inclosed Copies of a letter and of my reply, respecting a reserve of Land, which is stated to have been made in favor of Captain Barlow of the 3rd Regt. If the Officer, referred to, is the person, who superintended the Establishment of Our first Settlement at Melville Island, Lord Goderich would feel a more than common desire to confirm the Grant, provided you should feel satisfied with his Services on that occasion; at the same time his Lordship cannot authorize any departure in his ease from the accustomed Regulations, and he, therefore, desires that you will be guided by them in any steps, which you may take with a view to meet the wishes of the Party in consequence of this communication.

Land reserved
for M. Barlow.

I remain, &c.,

R. W. HAY.

[Enclosure No. 1.]

MR. J. BARLOW TO UNDER SECRETARY HAY.

Sir, Dublin, Gt. George St., 28 Aug., '27.

I received a letter some time since from my Brother (Capt. M. Barlow 3d Regt.) from Sydney, stating that he had applied for a Grant of Land in New South Wales, and that he had authorized Dr. Douglass to draw on me for Funds for the purpose of Stocking the Land, etc., if granted. I have since received a Communication from Dr. Douglass, dated March 7th, "That my Brother has received a Reserve of Land to the extent of 2,560 Acres, and that application should be made to the proper Office to have it confirmed as a Grant." May I take the liberty of requesting that you will have the kindness to inform me what steps should be taken for the Purpose of having the Reserve confirmed as a Grant, and whether any Minute of the above transaction has been forwarded to the Office of the Colonial Department. I am the more anxious to have information on this subject, as Dr. D. has already drawn on me for the £900. I beg you will have the goodness to excuse me, if I have mistaken the department thro' which this application should be made, and am, &c.,

Application for
confirmation of
land grant to
M. Barlow.

JAS. BARLOW.

[Enclosure No. 2.]

UNDER SECRETARY HAY TO MR. J. BARLOW.

Sir, Downing Street, 1st September, 1827.

I beg to acknowledge the receipt of your letter of the 28th Ultimo on the subject of a reserve of land, which has been made

1827.
2 Sept.

Application to
be referred to
governor.

at Sydney in favour of your Brother, Captain Barlow of the 3rd Regt., and which you now request to be confirmed to him; in reply to which, I have to acquaint you that as yet no Information has been received from the Colony respecting the reserve of Land in question, which will prevent the Secretary of State from giving any directions to the effect desired. A reference, however, will be made to the Governor, General Darling, upon the subject; and Lord Goderich will be happy to comply with your request, if circumstances will admit of his so doing; but I must apprise you that by a regulation, which has been long since established, Officers of the Army are not allowed to receive Grants of Land, unless they shall be on half pay; and it is probably owing to this circumstance that Captain Barlow, instead of at once receiving a part, has only been permitted to have a reserve of the Land in question.

I am, &c.,

R. W. HAY.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch marked "Circular No. 1." per ship Hoogley; acknowledged by Governor Darling, 25th February, 1828.)

3 Sept.

W. Huskisson
appointed to
succeed
Viscount
Goderich.

Sir,

Downing Street, 3rd September, 1827.

His Majesty having been pleased to honor me with the Seals of the Colonial and War Department in the room of The Lord Viscount Goderich,* I take the earliest opportunity of acquainting you therewith.

It will give me great satisfaction to be able to fulfil His Majesty's Gracious Intentions in this Appointment; and, as it is His Majesty's Pleasure that your Dispatches should for the future be addressed to me, I shall not fail to lay them immediately before The King and to transmit to you such Orders as His Majesty shall think fit to give thereupon.

I have, &c.,

W. HUSKISSON.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch marked "Circular No. 2." per ship Hoogley; acknowledged by Governor Darling, 26th February, 1828.)

8 Sept.

Order in
council for
regulation
of trade.

Downing Street, 8 September, 1827.

[*This was a lengthy circular despatch enclosing an order in council, dated 16th July, 1827, for "regulating the commercial intercourse between His Majesty's Possessions abroad and Foreign Countries."*]

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch marked "Separate," per ship Elizabeth.)

1827.
10 Sept.

My Lord,

Parramatta, 10th September, 1827.

I do myself the honor to submit to your Lordship the copy of a correspondence, which has taken place between Chief Justice Forbes and myself on the subject of the appointment of Mr. Foster to act as Solicitor General.

Correspondence
with F. Forbes
re appointment
of W. Foster
as solicitor-
general.

I cannot but feel surprized that Mr. Forbes should have expected that I should have consulted him respecting the appointment of Mr. Foster, or any other point on which I am not positively bound to do so, though it is a courtesy which, under other circumstances, I should certainly have shewn the Chief Justice. I trust, however, I have not acted inconsistently, though I have not had the benefit of Mr. Forbes' advice on this occasion.

Your Lordship will perceive by Mr. Forbes' letter of the 1st of September that he considers the Attorney and Solicitor Generals to be officers of his Court. However singular the coincidence to which he alludes, when stating his opinions to this effect in the concluding paragraph of that letter, it is by no means extraordinary that the *Australian* should have reported this decision in *large characters* at the very moment of this correspondence between the Chief Justice and myself on this point.

The circumstance, which led to Mr. Foster's appointment, is simply as follows. Conceiving that a person of more legal experience than the Attorney General appeared to possess would be important in the present state of this Government, I was immediately impressed with the necessity of securing, as soon as I might be able, the best assistance I could in the person of a Solicitor General; and, as the Government could not employ any of the professional gentlemen of the Colony, I naturally thought of Mr. Foster, who had accompanied Mr. Baxter from England and was considered a man of talent. He had not been called to the English Bar, but I was informed application had been made for his admission at the Bar of the Supreme Court here. I, therefore, waited till this took place, and then appointed him Solicitor General.

I shall abstain from taking up your Lordship's time with any observations on the subject of this correspondence, as the enclosures will put you in full possession of the matter. But I trust your Lordship will consider it necessary to put a stop, by some decisive measure, to Mr. Forbes's endeavour to assume a power of controlling generally the measures and acts of the Government. His own letters afford the best proof of the unfounded nature of his pretensions, and that of the first of

1827.
10 Sept.

September in particular betrays a consciousness, which he cannot conceal, that they cannot be supported and are not to be justified.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

Sir,

Sydney, 22nd August, 1827.

Difficulty
created by
appointment
of W. Foster.

I observed in the Gazette of this morning that your Excellency had been pleased to appoint Mr. Foster Solicitor General of the Colony. I beg to remind Your Excellency that, in the case of the late Mr. Holland, I distinctly stated to your Excellency the difficulty I felt in recognizing that Gentleman in the Office of Solicitor General, in consequence of his being an Attorney and having never been called to the Bar; and I have conveyed my doubts of the legal propriety of that appointment in another form, so as to engage the attention of His Majesty's Government. The same difficulty presents itself in the case of Mr. Foster. Like Mr. Holland, he has never been called to the Bar, and owes his admission to practice in the Supreme Court to a discretionary act of mine under the special circumstances of his case. He has been admitted, however, only in the same degree as the Attornies, that is, to act as a Barrister, until it may be convenient to draw the line between the two Departments of the profession. Had Your Excellency done me the honor to intimate your intentions of appointing a Solicitor General, I think I could have suggested a course, which would have enabled the Attorney General to have availed himself of the assistance of Mr. Foster, without placing me in the dilemma I now am in with respect to Mr. Holland. Of the qualifications of Mr. Foster for the responsible Office he has been nominated to fill, I presume your Excellency has been well satisfied. I can only profess my readiness to afford him every support in my power; but I must beg of your Excellency that, when any important arrangement is intended to be made at the Bar of the Supreme Court, your Excellency will afford me an opportunity of communicating with your Excellency upon the subject.

I have, &c.,

FRANCIS FORBES, Chief Justice.

[Enclosure No. 2.]

GOVERNOR DARLING TO CHIEF JUSTICE FORBES.

Sir,

Parramatta, 23rd August, 1827.

Your letter of yesterday, respecting the appointment of Mr. Foster as Solicitor General, having by mistake been taken to Emu Plains, it has only this moment reached me.

It is possible you may have mentioned the circumstance of your having refused to admit Mr. Holland to the Bar; but I have no recollection of your having informed me particularly of any difficulty which was felt in recognizing that Gentleman as Solicitor General.

1827.
10 Sept.

Status of
J. Holland or
W. Foster as
solicitor-
general.

If you had, I could hardly have failed to remember it, as your declining to admit him made a strong impression on my mind from the circumstance of his appointment proceeding directly from the King. I did not, however, think it necessary to notice the circumstance at the time, as Mr. Holland had mislaid his warrant.

With respect to Mr. Foster, I was not aware, as you had admitted him to practice in the Supreme Court, that there could be any objection on your part to his appointment as Solicitor General; and it, therefore, did not occur to me that it could be necessary to apprise you of my intention to place him in that situation.

I have, &c.,

RA. DARLING.

[Enclosure No. 3.]

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

Sir,

Sydney, 24th August, 1827.

Although your Excellency may not think it necessary to inform me of any appointments, you may deem proper to make in the Law Officers of the Colony, I feel it a duty to your Excellency to inform you, when such appointments appear to me to be inexpedient; and, under this impression, I beg leave in the most respectful manner to state, for the information of your Excellency and His Majesty's Government, that, in my opinion, it would be more beneficial to the Public Service to appoint Mr. Foster to the particular Office mentioned in the fourth Section* of the New South Wales Act. During the existence of an Attorney General, the Solicitor General is almost a nominal Officer of the Crown. The Court must *ex officio* take notice of the existence of the first Officer, and cases continually occur in Court, in which the presence of the Attorney General or the Officer contemplated by the Act is indispensably necessary to the procedure of the business of the Crown. The Solicitor General cannot supply the place of either.

Appointment
of W. Foster.

The doubt, which your Excellency is pleased to convey of the correctness of my assertion respecting Mr. Holland's appointment, I can only regret. Your Excellency will pardon me, however, for thinking that your Excellency is under some misapprehension of what appears to have made a strong impression on your mind. I never refused to admit Mr. Holland to the Bar; he never applied to me for such purpose; as an admitted

* Note 120.

1827.
19 Sept.

Attorney in England, he was entitled by the Charter to practise in this Court. He desired to be sworn in as Solicitor General, and I refused to administer the Oaths of Office until he produced his Patent; this was all that passed between us.

I have, &c.,

FRANCIS FORBES, Chief Justice, N.S.W.

[Enclosure No. 4.]

GOVERNOR DARLING TO CHIEF JUSTICE FORBES.

Sir,

Paramatta, 31st Aug., 1827.

Appointment
of W. Foster.

I have been prevented by illness until the present morning acknowledging your letter of the 24th Inst., in which you are pleased to point out the manner in which you consider Mr. Foster might be more beneficially employed than in the Office of Solicitor General.

I need not observe that I shall be always most desirous to give any suggestions for the better regulation of the Government the best consideration in my power; but, Mr. Foster's Commission having been issued immediately on the notification of his appointment, I am not aware that it would answer any useful purpose to enter into the consideration of this point at present.

As to the question generally respecting the Office of Solicitor General, as explained in your letter, I can only state that, the King having established the Office and made two successive appointments to it, I did not suppose it could now be objected to as inexpedient, as your Honor informs me you consider it to be.

Consultation
with F. Forbes
unnecessary.

In my former letter, I omitted to advert to that part of yours of the 22nd, in which you request *to be afforded an opportunity of communicating with me, when any important arrangement is intended to be made at the Bar of the Supreme Court.* It is not likely I should interfere in the arrangements of that Court. You will, therefore, excuse me in observing that I do not clearly comprehend the object of this suggestion, or how it is intended to apply to the appointment of Mr. Foster, the Solicitor General not being, as I am induced to believe, any more than the Attorney General an Officer of the Supreme Court.

Appointment of
J. Holland.

It would appear, by your letter of the 24th, that I had misconceived the grounds of your objection in the case of the late Mr. Holland. It is very possible I may have done so; and I think that any misconception on my part may be readily accounted for by a reference to your letter, to which I have now the honor to reply. In that of the 22nd, you observe, "I distinctly stated to your Excellency *the difficulty I felt in recognizing that Gentleman (Mr. Holland) in the Office of Solicitor General, in consequence of his being an Attorney, and not having*

been called to the Bar"; while, in your letter of the 24th, it is stated, "He (Mr. Holland) desired to be sworn in as Solicitor General, and I refused to administer the Oaths of Office until he produced his Patent."

1827.
10 Sept.

The question is not, however, that I am aware of, material as respects Mr. Foster, who has been admitted to the Bar and is in possession of the necessary Instrument of Appointment as Solicitor General.

I have, &c.,

RA. DARLING.

[Enclosure No. 5.]

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

Sir,

Sydney, 1st September, 1827.

I would not trouble your Excellency again upon a subject, which it appears is now settled, were it not to do myself an Act of Justice, which I am sure your Excellency will not deny me.

I must beg of Your Excellency not to suppose that I ever objected to admit the late Mr. Holland to the Office of Solicitor General. I know my duty to His Majesty too well to question the right of the Crown to appoint whomsoever it may deem proper to represent its interests in the Supreme Court. I always professed my readiness to swear in Mr. Holland, as soon as he should exhibit his Patent, which it was entirely within the discretion of your Excellency to grant or withhold. Our correspondence, which I have the honor to enclose, will clear up that point. But I did feel and express doubt how far I could recognize in him those rights and privileges in private causes, which belong to the Solicitor General at Home, and are the great objects of that Office. The distinctions of the Profession are founded on the best principles; and usage has so far established Law that I cannot forbear doubting whether it may be within the power of the prerogative to unsettle those distinctions, and confer upon an Attorney rank and preaudience above a Barrister, with whatever form of Commission he may be invested. It was this distinction, immediately present to the mind of every lawyer, that led me to express myself in a manner, which appears to have been ambiguous, without adverting to the probability that it might not be equally familiar to your Excellency.

Action taken
on arrival of
J. Holland.

I admitted Mr. Foster to practise as an Attorney in the Supreme Court at the pressing solicitation of the Attorney General though with some reluctance, as it was opposed to what I thought due to the practitioners, already admitted and sufficiently numerous in the Court. It was represented he was to act as an Assistant to the Attorney General, and in that view I admitted him. Had it been intimated that, within a few hours after his admission, almost after his arrival in the Colony, it

Admission of
W. Foster as
attorney.

1827.
10 Sept.

Attorney and
solicitor
generals as
officers of
court.

was intended to raise that Gentleman over the heads of the whole Bar, I should certainly have considered it an act of Justice to the other Members of the Court to refuse his admission altogether. I cannot help thinking I have some cause for regret at being surprized into an act, which may be felt as in some degree unfair on my part; and, under the influence of this opinion, I took the liberty of requesting that, in any future arrangement at the Bar of the Supreme Court, I might have an opportunity of communicating with your Excellency. It would be improper in this place to vindicate my opinion that the Attorney and Solicitor General are both regarded as Officers of the Court. It has been so ruled in *England*,* and, by a singular coincidence, the point has been raised in *the Supreme Court*† and was decided by Mr. Stephen and myself, within a few minutes after your Excellency's letter of yesterday's date reached me on my return to Sydney this morning.

I have, &c.,

FRANCIS FORBES, Chief Justice.

[Sub-enclosure No. 1.]

MR. J. HOLLAND TO CHIEF JUSTICE FORBES.

Sir,

Saturday, 27th January, 1827.

Reasons for
refusal to
swear in as
solicitor-
general.

From the result of the conversation with which you favoured me, I have to request that you will be so kind as to state your reasons for declining to swear me into the Office of Solicitor General, and particularly that you please to apprise me of any suggestions likely to remove the obstacles at the present time existing to the completion of my appointment.

I have, &c.,

JAMES HOLLAND.

[Sub-enclosure No. 2.]

CHIEF JUSTICE FORBES TO MR. J. HOLLAND.

[A copy of this letter, dated 27th January, 1827, will be found on page 204.]

[Enclosure No. 6.]

EXTRACT from the Australian dated 5 September, 1827.

"The Judgment of the Court.

Decision re
status of
attorney-
general.

"THE Chief Justice. The mode of proceeding in this Court, in prosecution of crimes, is created and regulated by Act of Parliament; and the direction of the Act must be strictly followed as the source of our jurisdiction and guide of our proceedings. The Act directs that all crimes shall be prosecuted by Information in the name of the Attorney General. By the Attorney

* Marginal note.—Rex vs. Wilkes.

† Marginal note.—Rex vs. Davidson.

General is intended an Officer similar to His Majesty's Attorney General in England. Of the Attorney General in England, it is said 'He is in truth an officer of, and has a place in the Court of King's Bench.'

"The Courts will take notice judicially of the Attorney General."

1827.
10 Sept. .

Decision *re*
status of
attorney-
general.

UNDER SECRETARY HORTON TO GOVERNOR DARLING.*

Sir,

Downing Street, 13th September, 1827.

13 Sept.

The Bearer of this letter, Ensign Stephen Burrowes, having obtained His Majesty's permission to quit the United Kingdom for the purpose of Settling in New South Wales under the arrangement, detailed in the General Order of the 16th May, 1827, a Copy of which was transmitted to you in Lord Goderich's dispatch of the 4th Ultimo, I am directed by Mr. Secretary Huskisson to desire that you will make to Ensign Burrowes a Grant of Land in proportion to his Capital, and that he may be admitted to the benefits, to which an Officer emigrating to the Colony under such circumstances will be entitled.

Recommend-
ation of
S. Burrowes
as military
settler.

I have, &c.,

R. W. HORTON.

UNDER SECRETARY HORTON TO GOVERNOR DARLING.

(Despatch per ship Asia.)

Sir,

Downing Street, 14th September, 1827.

14 Sept.

With reference to Lord Goderich's dispatch of the 3rd of August last, I am directed by Mr. Secretary Huskisson to acquaint you that Mr. John Sampson, who proceeds by the present opportunity to execute the duties of Solicitor General, has received an advance of £250 on account of his Salary, which will commence from the date of his embarkation.

Advance to
J. Sampson.

I have, &c.,

R. W. HORTON.

UNDER SECRETARY HORTON TO GOVERNOR DARLING.†

Dear Sir,

Downing Street, 19 September, 1827.

19 Sept.

At the request of Sir Nicholas Colthurst, to whom the Bearer of this letter, Mr. Henry Owen Beacher, is personally known, I beg to recommend him to your protection. Mr. Beacher is about to proceed to New South Wales as a Settler, and is represented to me as being a young Gentleman of most respectable family in Cork.

Recommend-
ation of
H. O. Beacher
as settler.

I have, &c.,

R. W. HORTON.

* Note 112. † Note 6.

1827.

20 Sept.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 1, per ship Hoogley; acknowledged by Governor Darling, 26th February, 1828.)

Sir,

Downing Street, 20 September, 1827.

Free pardon for
J. O'Halloran.

The Secretary of State for the Home Department having recommended that a Prisoner, by name John O'Halloran, who was sentenced to seven years transportation under the Insurrection Act at Limerick in March, 1823, and who was conveyed to New South Wales in the following August, should receive a free Pardon provided his conduct, since his arrival in the Colony, has been such as to render him deserving of that benefit, I have to desire that you will grant unto the above named Prisoner free permission to leave the Colony; and you will further give directions that a passage should be provided for him to this Country by the first opportunity, charging the expense thereof on account.

I have, &c.,

W. HUSKISSON.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 86, per ship Elisabeth.)

My Lord,

Parramatta, 20th September, 1827.

Old seal of
colony returned
to England.

I have the honor, in obedience to the commands in Earl Bathurst's Despatch, No. 101 of last year, to return the old Seal,* which has hitherto been in use by this Government.

His Majesty's Warrant, with the New Seal, have been received, and the latter is now used as directed by the said Warrant.

I have, &c.,

RA. DARLING.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 2, per ship Hoogley; acknowledged by Governor Darling, 26th February, 1828.)

21 Sept.

Sir,

Downing Street, 21 September, 1827.

Decision of
J. Stephen re
legal status
of convicts.

My Under Secretary, Mr. Hay, has laid before me your letter to him of the 27th of March last, marked "Private," inclosing the Correspondence between yourself and Mr. Stephen, the Assistant Judge of the Supreme Court of New South Wales; and, although this communication is not made in an Official form, the subject of it appears to me of such importance that I am unwilling to pass by the earliest opportunity of noticing it.

I have read the letter, addressed to you by the Judge under date of the 12th of March last, with great regret. It is impossible to admit the principle, for which he contends, that His Majesty's

* Note 121.

Representative in the Colony of New South Wales has no right to enquire whether language, attributed to a Judge in a Publick Newspaper, was really employed by him.

1827.
21 Sept.

Censure passed
on J. Stephen.

The Judicial opinion ascribed to Mr. Stephen was of a nature so important to the peace and good Government of the Colony, that it was plainly your duty to ascertain from himself whether the report was accurate. Although he denies that the published account of his address was a correct representation of the opinion he delivered, I regret to perceive that he has not stated what that opinion really was.

The general tone of the letter, which the Judge addressed to you, as well as the delay of nine days in answering your inquiry, have unavoidably produced an unfavorable impression of his disposition to support the established Authorities of the Colony. I am not disposed to take any further notice of this transaction at present; but, in the event of the recurrence of any similar proceeding, it will become my duty humbly to advise His Majesty to mark in a decided manner his disapprobation of the spirit, by which this communication appears to have been suggested.

I am disposed to believe that the strong impression, you entertain of Mr. Stephen having been accessory to the publication of this Correspondence in the Australian Newspaper of the 27 of March, must be founded upon some mistake. I cannot allow myself to suppose that one of the Judges of the Supreme Court could so far forget the duties of his Office, as to lend himself to such an attack on the Executive Government. If there were any sufficient evidence before me to support your supposition, it would become my duty to bring the subject before His Majesty for His very serious consideration.

Correspondence
supplied to
press.

You will communicate to the Judge a Copy of this Dispatch, accompanied with the expression of my earnest hope that I shall not be under the painful necessity of reverting to this disagreeable subject.

I have, &c.,

W. HUSKISSON.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 87, per ship Elisabeth: acknowledged by Sir George Murray, 28th September, 1828.)

My Lord.

Parramatta, 21st September, 1827.

Dr. Bowman, the Principal Surgeon of the Territory, has represented to me that he submitted to Sir Thomas Brisbane a requisition for a supply of medicines, etc., for the Colonial Hospitals, dated 9th May, 1825, a copy of which is enclosed; but, not having received any part of the supply, he is apprehensive the Requisition may not have reached your Lordship's Office.

Requisitions
for supply
of medicines.

1827.
21 Sept.
Requisitions
for supply
of medicines.

I have in consequence desired him to prepare a Requisition of the supply of medicines, etc., which he would now recommend to be sent out, and which I herewith transmit. Should no medicines have been shipped for the Colonial Hospitals, in consequence of the Requisition of May, 1825, I need not point out to Your Lordship the urgency of directions being given that the whole or at least a considerable portion of the Medicines now required should be forwarded by an early opportunity.

Dr. Bowman states that even in the case of the Medicines specified in the Requisition of the 9th May, 1825, having been despatched previously to the receipt of the Requisition, herewith enclosed, it will still be desirable that the Supply now required should be forwarded, as the chemical preparations will not be injured by keeping; and he considers it advisable to have a two years supply of Medicines on hand to prevent the inconvenience, which any unexpected delay in receiving those periodically required might occasion.

I have, &c.,

RA. DARLING.

[Enclosures.]

[Copies of these requisitions are not available.]

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 88, per ship Elisabeth; acknowledged by right hon. W. Huskisson. 15th May, 1828.)

22 Sept.

Appointment of
J. Raymond
to succeed
A. P. Onslow
as surveyor
of customs.

My Lord,

Parramatta, 22 September, 1827.

I have the honor to acquaint your Lordship, with reference to my Despatch No. 50 and to that marked "Separate," dated the 10th of April last, reporting the arrangements I had made respecting the Custom House, that Mr. Onslow, the Seareher and Surveyor, having resigned his appointment, I was induced from the circumstances of Mr. Raymond's situation, who has persevered in considering himself and Family as dependents on the Government, to appoint him to succeed Mr. Onslow. I am no further interested in the confirmation of Mr. Raymond's appointment than in obtaining the relief, which I shall feel, from the importunities I have been subjected to ever since his arrival. He came out under the auspices of Government, and it was impossible to allow his wife and eleven children to starve.

Should circumstances not permit of his confirmation, I beg to be informed what allowance I shall be permitted to grant him. He is not disposed to receive Land, and, his education appearing to have been neglected, he is not qualified for any Official Employment.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 89, per ship Elisabeth; acknowledged by right hon. W. Huskisson, 16th May, 1828.)

1827.
23 Sept.

My Lord,

Parramatta, 23rd September, 1827.

Having in my late correspondence had occasion to advert to the expense of the Police Department, as likewise to that of Printing for the Public Offices and Establishments of the Government, I now do myself the honor to transmit for your Lordship's information statements shewing these Expenses in detail.

Expenditure on
police and
printing for
public offices.

It may be thought that the Police Establishment is unnecessarily extensive; but, when the description of the Majority of this Community is considered, and the number of actual Prisoners in the Colony, with the exertions which have been used by the Press to excite them to disorder and revolt, it will be seen how important it is to keep up an efficient Establishment for the preservation of the Public Peace. That this has been happily secured and Bushranging completely put down is in a great measure to be ascribed to the arrangements, which have been made, as well in organizing the Police as in other respects; and I persuade myself that the expense, though apparently considerable, will not be put in competition with the important object which has been accomplished, the most perfect tranquility and security throughout the Colony. Your Lordship may rest assured I shall lose no available opportunity of diminishing the expense.

I have, &c.,

RA. DARLING.

[Enclosures.]

[Copies of these estimates, £21,274 18s. 7d. for police and £1,228 9s. 0d. for printing, will be found in a volume in series II.]

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 90, per ship Elisabeth.)

My Lord,

Parramatta, 24th September, 1827.

24 Sept.

I have the honor to acknowledge the receipt of Earl Bathurst's Dispatch No. 95, dated 1st of December last.

I have learned with much satisfaction that the assistance afforded the Bank of New South Wales, on the occasion of its embarrassment, has been approved by His Majesty's Government; and I have great pleasure in acquainting your Lordship that the Measures, adopted on the occasion, proved successful in restoring Public Credit and in establishing the circulating medium on a more secure and uniform basis, more particularly

Assistance
granted to
bank of N.S.W.

1827.
24 Sept.

as those important objects were attained, not only without any loss to Government, but without any pledge *even* of lending its support to either of the Banks beyond the occasion which called it forth.

Nomination of
W. Lithgow as
director.

It may be necessary to explain, with reference to the remarks in Earl Bathurst's Dispatch respecting the nomination of Mr. Lithgow as Director, that the temporary appointment of that Gentleman was solely with the view of ensuring the fulfilment of the engagements, entered into by the Bank with the Government, and to prevent any loss to the Public in consequence of the Monies, which had been deposited in the Bank by the Treasurer and Naval Officer. As soon as these objects had been secured, Mr. Lithgow retired from the Direction.

Prohibition of
officials acting
as bank
directors.

On the Establishment of the "Bank of Australia," there existed no similar motive for permitting any of the Officers of Government to act as Director; and it appeared advisable to withhold such permission, lest it might have led to the impression that Government was interested in the concerns of that Bank.

Custody of
public treasure.

I have not failed to take measures for giving effect to the arrangement, ordered in Earl Bathurst's Dispatch for the future security of the Public Treasure; and I have now the honor of enclosing for your Lordship's approval a copy of the Regulations, which have been framed for the purpose, to a strict observance of which the attention of the Treasurer and of the other Public Officers concerned has been particularly called.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

MINUTE No. 55

Parramatta, 4th September, 1827.

Instructions to
treasurer and
collectors of
revenue.

LET the enclosed Regulations, directed to be established by Earl Bathurst's Dispatch, No. 95 of 1st December, 1826, for the security of the Public Treasure, be communicated to the Colonial Treasurer, and a copy of the 1st Section to the Collector and Comptroller of the Customs and to the Collector of Internal Revenue.

Let the Colonial Secretary prepare a Letter to the President and Directors of each of the Banks, transmitting a Copy of the 3rd and 8th Section of the accompanying order for their information, and requesting to be furnished with any observations they may wish to offer on the subject of the proposed arrangement.

The President and Directors of the respective Banks to be apprized that they will be required to send in to the Colonial

Secretary, on the first day of every month, a detailed statement of the monies received from the Colonial Treasurer and paid to his order during the previous month.

1827.
24 Sept.

RA. DARLING.

[Enclosure No. 2.]

REGULATIONS.

Regulations
for control of
public treasure.

IN pursuance of Instructions received from the Right Honble. Earl Bathurst, His Majesty's Principal Secretary of State for the Colonies, His Excellency the Governor is pleased to direct that the following Regulations be strictly attended to by the Colonial Treasurer and the other Officers to whom they relate.

1st. All Officers, employed in the Collection of Revenue at Sydney, are required to pay over the amount, collected by them respectively in each week, to the Colonial Treasurer every Saturday, furnishing half monthly statements of their Collections to the Treasurer, and monthly accounts to the Auditor, according to the Established Regulations.

2nd. The Treasurer will cause the door of the Money vault of the Colonial Treasury to be secured by three separate locks and keys; one of which keys is to be kept by himself, another by the Auditor of Colonial Accounts, and the third by the Assistant Colonial Secretary; and the Vault is never to be opened except in the presence of the three Officers, entrusted with the care of the Keys as above mentioned. The money deposited in the Vault is always to be British Coin.

[Regulations 3 to 8 were repetitions of instructions 4 to 9 on pages 705 and 706, volume XII, subject to the necessary verbal alterations and the fixation of the amount of petty cash at £100 in regulation No. 3.]

Government House, 4th September, 1827.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 91, per ship Elisabeth; acknowledged by right hon. W. Huskisson, 17th May, 1828.)

My Lord,

Parramatta, 25th September, 1827.

25 Sept.

1st. I have the honor to acquaint your Lordship, in reference to my letter to Mr. Hay, dated the 28th July last, that Mr. Holland, Commissioner of the Courts of Requests, died in the Public Hospital on the 19th Ultimo.

Death of
J. Holland.

2nd. I beg leave to enclose for your Lordship's information copy of a Letter, addressed to me by Mrs. Holland, widow of the late Commissioner, in the hope that your Lordship will approve, under the circumstances of the case, of my having authorized the issue of £250 Sterling from the Colonial Treasury for the passage of Mrs. Holland and her family to England.

Passage money
advanced to
widow.

3rd. I have availed myself of this opportunity of removing Dr. Douglass from the situation of Clerk of the Council to the Commissionership of the Courts of Requests, and I have made a temporary arrangement for the performance of the duties of Clerk of the Council. I beg to be permitted to point out to your

Appointment of
commissioner
of court of
request.

1827.
25 Sept.
Office of clerk of
the council.

Lordship how important it is, in the present state of the Government, that the nomination of the Clerk of the Council should be left to me; and I, therefore, venture to hope that no appointment will be made until I am enabled to propose a permanent arrangement for your Lordship's approval.

I have, &c.,

RA. DARLING.

[Enclosure.]

MRS. HOLLAND TO GOVERNOR DARLING.

Sir,

Sydney, 22nd Septr., 1827.

Application
for passage
money from
M. Holland.

The decease of my late Husband (who held the Office of Commissioner of the Court of Requests) having left me a widow with two young children, and from his having been at considerable expense in coming out to this Colony, I feel myself considerably embarrassed; under these circumstances, I am induced to request that your Excellency will be pleased to order me a passage to England at the expense of Government. In soliciting this favor, I beg leave to observe I have been informed that the family of the late Mr. Butler, Registrar of the Supreme Court of Van Diemen's Land, were sent home free of expense; and I, therefore, trust your Excellency will be kind enough to extend the same indulgence to me.

As I learn the *Governor Ready* sails for England in the course of next week, I should wish to avail myself of this opportunity if possible.

I have, &c.,

M. HOLLAND.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 92, per ship *Elisabeth*; acknowledged by Sir George Murray, 26th November, 1828.)

26 Sept.
Inspection
of penal
settlements.

My Lord,

Parramatta, 26th September, 1827.

I have the honor to acquaint your Lordship that I proceeded, early in June last, on a tour of inspection to the penal Settlements of Port Macquarie and Moreton Bay; and I am happy to be enabled to state generally that I found these Establishments in good order, and that I had every reason to be satisfied with the manner in which they were conducted by their respective Commandants.

Convicts at
Port Macquarie.

At present, there are about 530 Prisoners at Port Macquarie, and this number is rapidly decreasing by the expiration of the period of the sentences of Individuals. By the end of the next year, according to the Returns before me, the above number, without resorting to any extraordinary measure, will probably be reduced to about 260. I propose, however, appointing a Commission to proceed early next year, in order to select such Individuals as from their conduct during confinement and the

slight nature of their offences may more immediately merit indulgence. I, therefore, anticipate that, by the end of 1828, the numbers may be so much reduced as to admit of Port Macquarie being thrown open to Settlers; and I beg to point out that it is most desirable on every account. From the nature of the climate, the sugar cane and other tropical productions may be cultivated there with success, and their being raised within so convenient a distance of Sydney would be advantageous to the Inhabitants and be beneficial generally to the Colony. I am, therefore, induced to request authority to remove from Port Macquarie, as soon as circumstances shall permit, the restraint which characterizes it as a Penal Settlement. In carrying this measure into effect, I beg to point out that several of the Prisoners are capital respites, who, as well as some others transported thither for crimes of a grave nature, should not be liberated, but ought to be sent to Moreton Bay or some other remote Settlement.

Such other Prisoners as might remain, I should propose reserving to the Settlers receiving Land in that Quarter, and assign them on the spot.

I beg to annex a Statement or classification of the Prisoners at Port Macquarie, which may be useful in enabling your Lordship to come to a decision on the matter, which I have now had the honor to submit for your Lordship's consideration.

With respect to the Settlement at Moreton Bay, its local situation appears to me highly objectionable. The tediousness and difficulty of the access render it extremely inconvenient.

From the entrance of the Bay to the mouth of the Brisbane, on the left Bank of which the Settlement is situated, is about fifteen miles, the intermediate space being in general so extremely shoal as to interrupt the Communication. The Settlement of Brisbane Town is at least fifteen miles further up the River, so that much time is lost in gaining the Settlement, and small vessels only, of a light draught of water, can accomplish it.

I propose, as a means of remedying in some degree this inconvenience, to form a small Settlement at "Dunwich" on the Isle of Stradbroke,* being the southern boundary of the Bay, for the purpose of receiving in the first instance the supplies sent from this for the Settlement, and the Timber, etc., to be forwarded thence to Sydney. According to this arrangement, the Vessels employed in communicating with Moreton Bay will not be detained longer than may be necessary to discharge and take in their cargoes at Dunwich, it being intended to station a small Vessel at that place for the purpose of conveying the supplies from the Establishment to the Settlement and bringing down the Timber, etc.

1827.
26 Sept.

Proposal to
open district of
Port Macquarie
for settlement.

Classification
of convicts at
Port Macquarie.

Disadvantages
of settlement at
Moreton bay.

Settlement
to be formed
at Dunwich.

* Note 122.

1827.
26 Sept.
Establishment
proposed at
Dunwich.

The Establishment at Dunwich will consist of a Warehouse or large store for the security of the supplies, until they can be forwarded to their destination. A few convict labourers will be kept there and a small Guard of Soldiers for the protection of the Establishment. The removal of the Settlement altogether might be desirable, but the Establishment at Dunwich will render it, at least, less necessary.

Commendation
of commandant.

Captain Logan of the 57th Regiment, the Commandant, has exerted himself very successfully in the cultivation of Grain and improving the resources of the Settlement, so that I trust it will shortly be able to provide for the maintenance of the Establishment, with the exception only of the meat which may be necessary for the Provision of the Troops and Prisoners.

I have, &c.,
RA. DARLING.

P.S.—I beg leave to enclose the Copy of a Government Order, which I issued on my return from Moreton Bay, designating as appeared necessary, more particularly than had been the case, the Island which is now called “Stradbroke” forming the Southern Boundary of the Bay.

R.D.

[Enclosure No. 1.]

Return of
convicts at
Port Macquarie.

STATEMENT of the Crown Prisoners under sentence of Transportation at Port Macquarie, 2nd October, 1827.

Capital Respites	56	
Under Sentence for Life	63	
.. 14 yrs.	30	
.. 7 yrs.	92	
.. less than 7 yrs. ..	288	
	—	529
Of the above, under sentence for 7 years, there will become free in the course of the year 1826	6	
for less than 7 years	258	
	—	264
Will remain Decr. 31, 1828 ..		265

[Enclosure No. 2.]

GOVERNMENT ORDER, No. 27.*

Naming of
localities at
Moreton bay.

Colonial Secretary's Office, 16th July, 1827.
HIS EXCELLENCY the Governor has been pleased to direct that the Island, forming the Southern Boundary of the Eastern Channel into Moreton Bay, shall be designated the Isle of Stradbroke in compliment to the Honble. Captain J. H. Rous, Commanding His Majesty's Ship *Rainbow*, the first Ship of War which entered Moreton Bay.

The point of Land on the Isle of Stradbroke, which is intended as the site of a Public Establishment opposite to Peel's Island, is

* Note 122.

named *Dunwich*, and the Anchorage where the Rainbow lay, *Rainbow Reach*. The Channel between the Isle of Stradbroke and Moreton Bay is named Rous's Channel.

1827.
26 Sept.

Naming of
localities at
Moreton bay.

2nd. The Governor has further been pleased to name the River recently discovered at Moreton Bay (immediately to the Southward of the Brisbane) the Logan, as a record of His Excellency's approbation of the zeal, which Captain Logan, the Commandant at Moreton Bay, has evinced in adding to the important discovery made by Mr. Oxley, the Surveyor General, of the River "Brisbane" in the year 1823.

By His Excellency's Command,

ALEXANDER MCLEAY.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 93. per ship Elisabeth; acknowledged by right hon. W. Huskisson, 18th May, 1828.)

My Lord,

Parramatta, 27th September, 1827.

27 Sept.

In forwarding the enclosed Memorial, addressed by Mr. George Cookney to Earl Bathurst, I beg to observe that Mr. Cookney was removed from his situation, because his services were not required and he was not considered eligible from his general habits for a public situation. Even his friend Mr. William Wentworth, admitted, when urging his being continued in his situation, that he should not himself be disposed to employ him.

Removal of
G. Cookney
from position
as architect.

Your Lordship will be satisfied by the accompanying Papers that no injustice has been done to Mr. Cookney, and that his claims and situation received every due consideration. The enclosure, No. 2, which Mr. Cookney himself has given in, shows that the agreement between the Government and him was to be no longer binding than might be convenient to either party.

Enclosure No. 3 is the report of a Board, appointed to ascertain the expediency of continuing him in the service of Government. Your Lordship will perceive that the arrangement was considered altogether unnecessary and objectionable.

As to the "Negotiation," of which Mr. Cookney speaks in his Memorial, he certainly made many efforts to be reinstated, without any intention on my part to employ him, when at last an application was made to me to pay the expence of his passage to the Mauritius, and Sixty pounds was advanced for that purpose.

I shall now leave your Lordship to determine what attention is due to Mr. Cookney's remonstrance, when, having received an allowance several months since to enable him to return to his friends, he is still here and has presumed to urge his being reinstated.

I have, &c.,

RA. DARLING.

1827.
27 Sept.
Memorial of
G. Cookney.

[Enclosure No. 1.]

THE HUMBLE MEMORIAL OF GEORGE COOKNEY, CIVIL ARCHITECT,
To the Right Honorable Earl Bathurst, Secretary of State for
the Colonies, etc., etc., etc.
Sheweth,

That Your Lordship's memorialist arrived in this Colony under the circumstances and pledge, mentioned in the following Memorial which he addressed to His Excellency Lieut. Genl. Ralph Darling on the 27th of November, 1826.

"To His Excellency Lieut. Genl. Ralph Darling, Governor and Commander in Chief of New South Wales and its Dependencies, etc., etc., etc.

"The humble Memorial of George Cookney, Civil Architect,
Sheweth,

"That your memorialist, having been in this Colony in the Year 1823 under the hope of establishing himself here as an Architect, and finding inadequate employment in his Profession, again quitted the Colony in the Year 1824 and proceeded to the Isle of France.

"That, after your memorialist had been there about 8 months, his brother, Mr. John Cookney of that place, received a Letter from Mr. Wm. Charles Wentworth of Sydney stating that, if memorialist had not left the Isle of France, the situation of Government Architect at Sydney was vacant, and that he was commissioned by the private Secretary of the Governor to say that, if Memorialist would return within 3 or 4 Months, it should be kept open for him until then.

"That memorialist, in consequence of the invitation, left the Isle of France in the Ship Philip Dundas, being the first vessel that sailed from thence for this Colony, and arrived here on the 5th March following, and, after some correspondence and several interviews with Major Ovens, his late Excellency's Private Secretary, relative to the remuneration he was to receive for his trouble, was appointed to this situation on the 22nd day of April, 1825, and continued to discharge the duties of it until the 19th day of April, 1826, when it was signified to memorialist by the Colonial Secretary that your Excellency had no further occasion for memorialist's services.

That, since that period, your memorialist has been flattered with the hope that your Excellency would either reinstate him in this Office or avail yourself of his services in some other capacity; and that this hope has been kept alive by a protracted negotiation of many months continuance, which, Mr. Wentworth has at length informed your memorialist, has been productive of no satisfactory result.

"That the whole compensation, which your memorialist received during the twelve months he filled the appointment of Government Architect, amounted only to the Sum of £308 Currency, including all expenses; and that your memorialist, since the loss of his appointment, has been without resource, having had no private practice, and has unavoidably contracted debts for his mere subsistence to the Amount of £300, and that his passage from the Isle of France, independently of his outfit, cost your memorialist 300 Spanish Dollars.

"That, under these circumstances, your memorialist humbly hopes that your Excellency will be pleased to direct compensation to be made to your memorialist, as well with reference to the money expended for his Passage as to the loss of time, which he has sustained by his compliance with the invitation of his late Excellency, and so that your memorialist may be enabled to return to the Isle of France and be as little damnified as possible for having acted on the public pledge of employment by the Government, contained in Mr. Wentworth's aforesaid Letter to your memorialist's brother.

"And your memorialist, as in duty bound, will ever pray, etc., etc., etc.

"GEORGE COOKNEY."

"Sydney, New So. Wales, Novr., 1826.

"I certify that the facts contained in the above memorial, as far as they relate to me, are correct, and that I entertain no doubt of the correctness of the memorial throughout.

"27th Novr., 1826.

"W. C. WENTWORTH."

That, in reply to the above Memorial, your Lordship's memorialist, after a considerable delay, received a warrant on the Colonial Treasury for the Sum of £60, being the amount in Sterling value, which he had paid for his passage hither from the Isle of France; but your Lordship's memorialist has been unable to obtain any compensation for loss of time or any other employment in this Colony, although his services, as Civil Architect, appear to him to be quite as necessary as they were at the time this Office was first conferred on him.

But, under these circumstances, Your Lordship's memorialist humbly hopes that your Lordship will be induced either to reinstate him in his aforesaid Office and order him all arrears of Salary, or else appoint him to some other situation here, in which his services may be beneficial to himself and useful to the Government.

And your Lordship's memorialist, as in duty bound, will ever Pray, etc., etc.

GEORGE COOKNEY, Civ. Arch't.

Sydney, New So. Wales, May, 1827.

1827.
27 Sept.

Memorial of
G. Cookney.

1827.
27 Sept.

[Enclosure No. 2.]

MR. G. COOKNEY TO COLONIAL SECRETARY MACLEAY.

Sir,

28th January, 1826.

Agreement with
G. Cookney
to act as
architect.

Agreeably to the request, contained in your Communication of the 26th, in reply to mine of the 16th Instant, I have the honor of forwarding to you, for the information of His Excellency the Governor, a Copy of the Agreement and Authority under which I have acted as Colonial Architect.

"Sir,

"Engineer Office, 22d April, 1826.

"I have His Excellency the Governor's commands to acquaint you that, having acceded to the Terms stated in your letter of the 4th Instant, viz. of allowing you 7½ pr. Cent. upon the amount of the Convict labour performed at the New Gaol, at the rate of 8s. per week for each Individual employed thereon, and on such materials as are used in the building, He, therefore, requests you would give such instructions, as you may see necessary for the guidance of the Overseers employed upon the same.

"The Agreement to be in force so long as Government is satisfied with your services, and so long as you may find convenient to continue in the employ.

"I have, &c.,

"Mr. G. Cookney.

"J. OVENS, Engineer."

I beg leave to remark that the foregoing letter does not fully pourtray the absolute nature of the Engagement, it being only the last of a series, pending a Negotiation, exclusive of the results of several personal interviews with the late Major Ovens.

I think, with becoming deference, that I could better satisfy your wishes by waiting upon you at your convenience, and bringing with me the whole correspondence, as at the same time I can answer any interrogations that you may feel disposed to put to me.

I am, &c.,

92 George Street.

GEORGE COOKNEY.

[Enclosure No. 3.]

REPORT BY BOARD.

Board Room, 25 March, 1826.

Report on office
of colonial
architect.

THE Board, called upon to meet by His Excellency the Governor's Minute, No. 44 dated 22nd February, to take into consideration the appointment of Mr. George Cookney as Colonial Architect, and report whether, under present circumstances, it appears desirable to continue that person in employment, and whether the arrangement as to the mode of remunerating his services is

objectionable, is of opinion that, under present circumstances, the employment of a Colonial Architect permanently on the Establishment of the Colony does not appear necessary, and that it would be more desirable to remunerate any architect, whom Government may employ, for each separate work on which his services may be required. With respect to the mode of remunerating the Colonial Architect at present in practice, is highly objectionable.

Mr. Cookney is called upon to furnish an account, shewing the amount of what he considers is now owing to him according to his Agreement.

ALEXR. McLEAY. J. T. CAMPBELL.
H. DUMARESQU.

1827.
27 Sept.

Report on office
of colonial
architect.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 94, per ship Elizabeth; acknowledged by Sir George Murray, 31st May, 1828.)

My Lord, Parramatta, 30th September, 1827.

30 Sept.

I have the honor, in reference to my Despatch No. 69, reporting that Captain Stirling of His Majesty's Ship *Success* had proceeded, in execution of the Instructions communicated to him by Earl Bathurst, to establish a Settlement on the Northern Coast, to transmit for your Lordship's information the copy of a letter, which I have received from that Officer, reporting that Raffles Bay* appeared to him the most eligible situation with reference to the object proposed, and that a spot had been selected on the eastern side of the Bay near its entrance, where a Settlement was commenced, called Fort Wellington, having been taken possession of on the anniversary of the Battle of Waterloo.

Foundation of
settlement at
Raffles bay.

In speaking of Raffles Bay, Captain Stirling mentions it as a convenient depot for the Malay fishermen, as a desirable Port of refreshment for Vessels passing through Torres Straits (which is a most intricate and dangerous navigation), and affording at all seasons of the year a safe and convenient anchorage for vessels of every description, with an abundance of fish and fresh water on its shores.

I regret extremely to find that the Brig *Mary Elizabeth*, one of the Government Vessels which has Stores on board necessary for the Establishment of the Settlement, had not arrived when Captain Stirling wrote. I trust, however, as she is reported to have been seen by a Vessel, which has lately arrived, that she joined in time to prevent any serious delay in rendering the Establishment comfortable in point of accommodation.

Voyage of brig
Mary Elizabeth.

1827.
30 Sept.

Shipments of
provisions.

A Supply of provisions was forwarded by the Brig Ann, some time after the Expedition had sailed, and I propose despatching one of the Government Vessels with further supplies the moment that a Vessel can be spared for that service.

I have, &c.,

RA. DARLING.

[Enclosure.]

[A copy of this letter, dated 20th June, 1827, will be found in a volume in series III.]

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Elisabeth.)

Sir,

Parramatta, 30th September, 1827.

Despatches
acknowledged.

I have the honor to acknowledge your several letters, as specified in the Margin,* which arrived here on the 27th Instant by the Convict Ships *Cambridge* and *Harmony*; and I shall do myself the honor to reply, with as little delay as possible, to those which require to be specially answered.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Elisabeth; acknowledged by under secretary Twiss, 3rd August, 1828.)

Sir,

Parramatta, 30th September, 1827.

Disposal of
surplus stores
from convict
ships.

With reference to your letter dated 5th October last year, transmitting a Copy of a Communication from the Commissioners of the Victualling Board relative to the disposal of the Medical Stores, which remain after the arrival of Convict Ships, I do myself the honor of acquainting you that, agreeably to the suggestion of the Commissioners and in conformity with directions from the Treasury Board to the Deputy Commissary General, Medicines of every description have for some time past been delivered over, as soon as landed, to the Principal Surgeon, and other Stores, known by the denomination of "Medical Comforts," such as Tea, Sago, Barley, etc., are delivered into the Commissariat Stores, with a view to equalizing the distribution of them to the various out Stations on the requisitions of the several Medical Officers.

As these Medicines and Stores are shipped in the first instance for the use of the Convicts embarked, and the few remaining after the Voyage are appropriated to the convicts received into

* *Marginal note.*—*Cambridge*, 27 September, 1827, duplicate; 4th April, Private, Duplicate; 9th June. *Harmony*, 14th May, 1827; 18th do., Duplicate; 20th May, Duplicate; 28th May.

the Public Hospital on shore, I presume it will not be necessary that the Value, which is inconsiderable, should be paid or accounted for by the Civil Government. I have, &c.,

1827.
30 Sept.

RA. DARLING.

GOVERNOR DARLING TO MR. E. BARNARD.

(Despatch per ship Elisabeth.)

Sir, Parramatta, 30th September, 1827.

I have the honor to acquaint you in reference to your Letter of the 26th March last that the Reverend Roger Murphy Roman Catholic Chaplain has not arrived and I understand from the Reverend Mr. Power has no intention of coming out.

Non-arrival of
Rev. R.
Murphy.

I have, &c.,

RA. DARLING.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 3, per ship Hoogley; acknowledged by Governor Darling, 26th February, 1828.)

Sir, Downing Street, 1 October, 1827.

1 Oct.

I have received and laid before the King your dispatch, No. 40 of the 12th March, reporting the result of the Trial of several Prisoners for piratically seizing the Brig "Wellington" on her Passage to Norfolk Island, and stating the circumstances under which you had been induced, in the particular cases therein enumerated, to commute the Sentences of Death passed upon the Prisoners to Transportation for Life to Norfolk Island; and I am commanded by His Majesty to signify His approval of the determination, to which you came, of limiting the number of those, who were to be executed, to six, and of subsequently sparing the Life of one of those destined to suffer, thereby reducing the number to five, in consideration of the favorable circumstances which were alleged in his behalf.

Approval of
sentences on
pirates.

I have, &c.,

W. HUSKISSON.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 95, per ship Elisabeth; acknowledged by Sir George Murray, 31st May, 1828.)

My Lord, Parramatta, 1st October, 1827.

I do myself the honor to transmit, for your Lordship's consideration and orders, Copy of a Minute, which I issued in the month of August last (in reference to my Letters of the 25th

1827.
1 Oct.

Prohibition of
grant or sale
of land to
absentees.

of December and 15th May last, addressed to Mr. Under Secretary Hay) on the subject of Grants or Reserves of Land being made to non-Residents.

I was induced to adopt this measure as a means of relieving myself from applications for Land on the part of persons, who either come here for the moment, or authorize Individuals, residing in the Colony, to lay out a little money in the purchase of Stock for them.

I need not point out, if those persons were permanent Residents, that the Colony would benefit by the money, which they would necessarily expend in the maintenance of themselves and families, which in every country is a matter of importance and particularly so in a young Colony like this.

I beg to state that I have now extended the principle by declining to authorize the *Sale* of Land to non-Residents, under the impression that it is equally injurious to the Colony.

I have to request your Lordship's attention to the period prescribed for residence in the first paragraph of the Minute, and, with reference to the Regulation requiring Officers retiring from the Military Service with a view of becoming Settlers to enter into a Bond to reside seven years in the Colony, request to be informed whether your Lordship considers the period fixed, *three years*, is sufficient.

I have, &c.,

RA. DARLING.

[Enclosure.]

MINUTE No. 49.

Parramatta, 10th August, 1827.

Instructions re
land grants.

1st. It being considered that the practice of giving Reserves of Land to Individuals, who do not intend to reside or remain in the Colony, is injurious to its interests, inasmuch as it tends to defeat the object of duly settling and improving it, I have thought it necessary to discontinue authorizing Reserves of Land, and to determine that no Grant shall be made to any Individual, who does not intend to reside in the Colony at least three years.

2nd. It appears that persons, who are chiefly employed in mercantile or other occupations, foreign to agricultural pursuits, conceive they have a claim to Land in proportion to the Value of the Merchandize or other capital, which they have imported; it has become necessary to explain that it is not intended to make Grants of Land to such Persons, and that the specification of Capital, in the Government Order No. 35, was intended to apply to such persons only as should come out as *bona fide* Settlers, and not to Persons engaged in Business or Trade.

Let the above be notified to the Land Board that they may report, when any Applicant presents himself to obtain a Reserve or Land Grant, contrary to the intentions of this Minute.

1827.
1 Oct.

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Elisabeth.)

Sir,

Parramatta, 1st October, 1827.

I have the honor to acknowledge having received on the 27th of last month by the Convict Ships, Cambridge and Harmony, the several Despatches, specified in the Margin,* from the Right Honble. the Secretary of State, and to which I shall have the honor to reply as early as circumstances will permit.

Despatches
acknowledged.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO COMMISSIONERS OF THE NAVY.

(Despatch per ship Elisabeth.)

Gentlemen,

Parramatta, 1st October, 1827.

I have the honor to acquaint you that I have reason to believe the Countess of Harcourt, Convict Ship, had not been duly supplied with Water on leaving England, it having been considered necessary, from apprehension of its insufficiency, that the Troops and Prisoners should be put on an Allowance of three Pints a day from the 6th of June till the day of their arrival here on the 23d of that Month; and I would, therefore, beg leave to suggest the expediency of its being carefully ascertained before the Sailing of a Prison Ship that she has taken on board an adequate Supply of Water for the Voyage. I have, &c.,

Insufficiency
of water on
ship Countess
of Harcourt.

RA. DARLING.

GOVERNOR DARLING TO MR. E. BARNARD.

(Despatch per ship Elisabeth.)

Sir,

Parramatta, 1st October, 1827.

I have the honor to acquaint You in reference to Your Letter dated the 5th August, 1826, that the advance of £300 to Mr. Holland lately deceased has been recovered by Stoppage from his Salary as Commissioner of the Courts of Requests, But that the £200 last mentioned in your letter remains unpaid.

Advances due
by J. Holland.

I have, &c.,

RA. DARLING.

[Another letter of same date notified the drawing of a bill to pay a quarter's salary to the chief justice.]

* Marginal note.—No. 1, April 30th, 1827, Circular; No. 1, May 1st; No. 2, May 2nd; No. 3, May 3rd; No. 4, May 13th; No. 5, May 19th; No. 6, June 1st.

1827.
1 Oct.

GOVERNOR DARLING TO MR. E. BARNARD

(Despatch per ship Elisabeth.)

Sir,

Parramatta, 1st October, 1827.

Despatches
acknowledged.

I have the honor to acknowledge the receipt of your letters, as dated in the Margin,* which have arrived by recent opportunities. Such of them as require it shall be specially replied to, as soon as I receive the necessary information.

Request for
priced invoices.

I will not delay pointing out to you the serious inconvenience, which is felt from the want of *priced Invoices*, which for some time past have not accompanied the Stores, sent out for the use of different Establishments. It is in consequence impossible to comply with the Instructions, which I have received from the Lords of the Treasury; and I must, therefore, beg your immediate and constant attention to this object, which is now of more importance than ever.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 96, per ship Elisabeth: acknowledged by Sir George Murray, 31st May, 1828.)

2 Oct.

My Lord,

Parramatta, 2nd October, 1827.

Inquiry by
board re convict
department.

The business in the Office of the Principal Superintendent of Convicts having fallen considerably in arrear, and the dishonest proceedings of some of the clerks employed having been recently brought to light, who, with the exception of the Chief Clerk, all are Convicts, I felt it necessary to appoint a Board to examine into the business of that Office and to consider the best means of performing it.

Convicts
maintained by
government.

Your Lordship will perceive, by the accompanying memoranda, that the Official business of the Convict Department is of a very extensive and detailed nature. The number of Convicts maintained by the Government generally amounts to about 4,500. These include the Prisoners of every description, those sentenced to work on the Roads as well as the Prisoners at the Penal Settlements and on board the Hulk.

Issue of clothing
to convicts.

The clothing of these Prisoners is supplied by the Government; and the trouble, which is occasioned by their being dispersed over the Colony, is inconceivable. The fluctuation is incessant, men being assigned and returned from assignment almost daily. These are frequently sent in nearly naked, and the references to ascertain their claims are in fact endless. As a means of

* *Marginal note.*—9 April; 14, 16, 16, 18 May; 6, 15, 18, 22, 27, 29 June; 11 July; 18 August.

remedying this inconvenience in some degree, I have it in contemplation to direct the issue of clothing to all Prisoners, kept at the immediate charge of the Government, at two fixed periods of the year. The trouble of reference will be saved by this means; the result of which is besides seldom satisfactory, and the Individuals will be at least as well clothed as at present. I had proposed making this measure general, and consulted some of the principal Inhabitants, whom I assembled for the purpose; but they were of opinion it would be attended with serious inconvenience to the small Settler. I can entertain no doubt that your Lordship will concur with me in approving the view, which the Board has taken of the subject generally in the accompanying report, and more especially as to the disadvantage of employing convicts as Clerks at least at the head of the different branches. The fact is these people are guilty of all sorts of nefarious practices, altering and interpolating the Registers, and cannot be restrained by any fear of punishment or disgrace.

1827.
2 Oct.
Issue of clothing
to convicts.

Misconduct of
convict clerks.

Under these circumstances, I have not hesitated to authorize the employment of two additional free clerks, and I hope your Lordship will approve of my adding to this number, which I should propose doing, so as to get rid altogether of the Convicts. Convicts should not be employed as Clerks, when the business relates to Convicts. If they are not influenced by a fellow feeling, they are generally speaking open to corruption and cannot resist a bribe.

I have, &c.,

RA. DARLING.

[Enclosures.]

[No. 1] MEMORANDUM of the detail duties of the Department of the Principal Superintendent of Convicts, 25th August, 1827.

[No. 2] REPORT by board on "the Business of the Principal Superintendent of Convicts," 25th August, 1827.

[Copies of these lengthy departmental papers will be found in a volume in series II.]

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 97. per ship Elisabeth.)

My Lord,

Parramatta, 3rd October, 1827.

3 Oct.

I do myself the honor to acquaint your Lordship, in reference to my Despatch No. 9 of the present year, that Dr. Shortt has relinquished his claim on the Australian Agricultural Company on account of the land conditionally granted to him

Claim
abandoned by
F. Shortt.

1827.
3 Oct.

Land granted
to F. Shortt.

at Port Stephen, and that I have in consequence granted him an equal quantity 2,000 acres at Hunter's River, which will render it unnecessary to enter further into the subject of his Petition, which I had the honor to forward with my Despatch above referred to.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 98, per ship Elisabeth; acknowledged by Sir George Murray, 3rd June, 1828.)

4 Oct.

Application
from H. Steel
for increase
of salary.

My Lord,

Parramatta, 4th October, 1827.

I do myself the honor to transmit for your Lordship's consideration the accompanying copy of a letter and enclosure from Mr. Steel, principal Jailer in Sydney, applying for an augmentation of Salary.

In recommending Mr. Steel's application, I beg to state that, since my Despatch No. 48, forwarding the report of the Board on the salaries of the Civil Officers, Mr. Steel has been allowed £50 a year in lieu of the fees formerly received by him; and, although the Board consider, as will be seen on reference to their Report, that £250 a year is sufficient, still it appears to me, from Mr. Steel's former condition in life, having been a Captain in the Army, and the importance of having a man of respectable character in that situation, that a salary of £300 is not more than a sufficient remuneration for the proper performance of the duties, which are of a very painful and responsible nature.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

MR. H. STEEL TO SHERIFF MACKANESS.

Sir,

H. M. Gaol, Sydney, 10th July, 1827.

I have the honor to request you will be pleased to submit for the consideration of His Excellency the Governor my application that an addition of Fifty pounds may be made to my annual salary. The person at Hobart Town holding a similar situation has £300 per annum and Fees. I subjoin a schedule of the lowest rate of my Expenses annually, by which I hope my request may not be deemed unreasonable.

I have, &c.,

HENRY STEEL.

[Enclosure No. 2.]

[A copy of this detailed list of expenses, amounting to £296, will be found in a volume in series II.]

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 99, per ship Elisabeth.)

1827.
5 Oct.

My Lord,

Parramatta, 5th October, 1827.

Conceiving it would be satisfactory to your Lordship to be furnished with more precise information of the Financial concerns of this Government, than it has hitherto been in my power to transmit, I have with this view had statements prepared of the Revenue and Expenditure, which I am induced to think are as correct as the nature of circumstances permits.

Statements of
revenue and
expenditure.

I accordingly do myself the honor to transmit a statement or Estimate of the Annual Expense of the several Public Departments, which are considered chargeable on the Colonial Revenue.

An Abstract of the Colonial Revenue for the year ended 30th of last month.

A Statement or Estimate of the Annual Expense, incurred for the maintenance of Convicts and the support of the Penal Establishments and out settlements, considered as payable from the monies voted by Parliament, and drawn for by Bills on the Lords Commissioners of His Majesty's Treasury.

I shall now proceed to offer some remarks on the several Statements.

No. 1 includes the whole Expense of the Judicial and Jail Establishments, and a moiety of the expense of the Police Establishment.

Expenditure
on judicial,
gaol, and police
establishments.

It will be seen by the enclosed copies of Reports, which accompanied my letters to Mr. Hay of the sixteenth of December and sixth of March last, that it was considered, from the circumstance of this Colony being appropriated as a Place of Transportation for the punishment of persons convicted of offences in the Mother Country, that the Home Government should pay two thirds of the Police and Jail Establishment, together with a portion (which, however, it appeared difficult to determine) of the Judicial Establishment. Instead of this, the whole is placed against the Colonial Revenue with the exception of a moiety of the Expense of the Police, which is inclosed in Statement No. 3, as chargeable to the Home Government.

With respect to the statement of the Revenue No. 2, it is difficult at this moment to offer an opinion how it may be affected by the Distillation from grain, which is just commencing. Should the Colonial Spirit be generally used, as it most probably would by the lower orders of the people, the

Effect on
revenue of
colonial
distillation.

1827.
5 Oct.
Effect on
revenue of
colonial
distillation.

Revenue would be subject to a diminution, proportionate to the difference of duty on the quantity of foreign spirits kept out of the market, the duty on imported spirits, as will be shown hereafter, being considerably higher than on those distilled in the Colony, unless indeed the comparatively cheap rate of the latter should in a very extraordinary degree increase its consumption; though it may be doubted whether the propensity for the use of ardent spirits could be *indulged to a greater excess than it is at present*.

Duty and sale
price of spirits.

The duty on Spirits of Colonial distillation is 2s. 6d. per gallon; and it will probably be sold at from 8s. to 12s. per gallon. The duty on British and West Indian Spirits is 6s., and at present they sell at 20s. a gallon, being seldom lower than 12s. The duty on Foreign Gin and Brandy is 7s. 6d. a Gallon, which bring a price proportionably higher than West Indian Spirits; but the consumption is comparatively small.

Revenue
charged with
support of
orphan schools.

I avail myself of this opportunity of remarking that the Revenue still continues chargeable with *one eighth* of the duties, paid on goods imported into the Colony, for the support of the Orphan Schools, though, as so considerable a portion of the Territory has been set apart for the Church and School Establishments, it might not be unreasonable to discontinue this Grant, which was ordered by Governor Macquarie at a time when there were no other funds for the support of these Establishments.

This portion of the duties, which amounted last year to about £5,600, is deducted in the statement of the Revenue, not being available to any other expenses than those of the two orphan School Establishments.

Revenue
exceeded by
expenditure.

It consequently will appear that the Expenditure exceeds the Revenue by about £13,000.

Necessity for
increased
revenue.

If your Lordship should concur in opinion that the Expenses, specified in Statement No. 1, should continue chargeable on the Colonial Revenue, it will be necessary to increase the resources of the Government, so as to render them equal to the necessary expenditure; though I should hope that any additional provision will hardly be necessary for the next year 1828, as rather a large sum will become due during the course of that year, on account of the Sale and Rent of Land.

Expenditure
chargeable to
English
treasury.

The Expenses, chargeable to the Home Government according to statement No. 3, appear to Amount to £80,263 19s. 5d., so that the total expense of the Civil Government and Convict Establishment, exclusively of the Stores sent from England (the cost

of which cannot be ascertained, no statement of the prices having for some time past been forwarded with the Supplies) may be stated as follows: Vizt.

1827.
5 Oct.

Expenditure
chargeable to
English
treasury.

No. 1 Civil Departments	£82,095	0	0
No. 3 Convict Establishm'ts	80,263	19	5
<hr/>			
Total Expense ..	£162,358	19	5
No. 2 Colonial Revenue	68,874	11	9
<hr/>			
Chargeable to Home Government ..	£93,484	7	8

It is necessary to point out, before closing my letter, with reference to the Convict as well as other Establishments, that the increase of Expense is more in appearance than in reality, it being occasioned in no inconsiderable degree by the consolidation of the allowances, formerly granted to individuals with their Salaries, for example, Forage for horses, Rations for themselves, and Rations and Slops for their Servants, and in some cases for House Rent or Lodgings. The whole of these allowances, except I believe in the case of the Surveyors, who receive Forage when employed in the field, are now included under one head as Salary, which will account for the former expense of the Establishments appearing comparatively small, the allowances having been issued under distinct heads and at one time in kind from the Public Stores.

I have, &c.,
RA. DARLING.

P.S.—I should have noticed in the Statements, No. 1 and 3, Public works, that no charge is included for any Public Works or Buildings, which it may be necessary for the Government to undertake. The Stores, as far as they are required, would of course be applied, and the convict Mechanics and Labourers retained by Government would be employed in such cases. But applications for Watch Houses, Jails, or Lock up Houses, Court Houses for the Meetings of the Quarter Sessions, and Magistrates of Districts, have been very numerous of late; and, from the impossibility of detaching the Government Mechanics, or indeed being able to spare them from Sydney, those objects are undertaken by people in the country, who, from their being of a rude and temporary nature, are able to complete them, though there are no Master Workmen here, who could contract for any Building or work except of the commonest description.

R.D.

[Enclosure No. 1.]

1827.
5 Oct.

Estimate of
annual
expenditure
on public
departments.

ESTIMATE of the Annual Expense of the several Public Departments
and Establishments, which form a charge on the Colonial
Revenue of New South Wales.

£82,095 0s. 0d.

Distribution of the above Sum.

Department or Establishment.	Amount.			Total.		
	£	s.	d.	£	s.	d.
His Excellency The Governor, Private Secretary, and Office Establishment	4,775	0	0			
Contingencies	50	0	0			
				4,825	0	0
Colonial Secretary and Establishment (including Mr. McLeay's Pension)	5,175	0	0			
Contingencies	150	0	0			
				5,325	0	0
Clerk of the Legislative Council				800	0	0
Surveyor General and Establishment	4,550	0	0			
Lodging and Forage Allowances	1,450	0	0			
Contingencies	150	0	0			
				6,150	0	0
Commissioners for Apportioning the Colony and Valuing the Crown Lands				730	0	0
Land Board and Clerk				450	0	0
Collector and Comptroller of Customs, Officers, and Clerks	4,570	0	0			
Warehouse Rent	350	0	0			
Occasional Tide Waiters	360	0	0			
Miscellaneous Expenses	250	0	0			
				5,530	0	0
Collector of Internal Revenue and Establishment ..	650	0	0			
Contingencies	20	0	0			
				670	0	0
Colonial Treasurer and Establishment	1,520	0	0			
Contingencies	50	0	0			
				1,570	0	0
Auditor and Establishment	1,250	0	0			
Contingencies	50	0	0			
				1,300	0	0
Surveyor of Distilleries and Establishment				760	0	0
Supreme Court and Judicial Establishment	10,025	0	0			
Allowances to Officers Serving as Jurors	500	0	0			
Allowances to Witnesses	600	0	0			
Contingencies	75	0	0			
				11,200	0	0
Sheriff and Establishment, including Gaols and Phoenix Hulk	3,380	0	0			
Contingencies	180	0	0			
				3,560	0	0
Coroners of the Territory				700	0	0
Police Establishment throughout the Colony	20,000	0	0			
Cost of Horses for the Mounted Police	600	0	0			
Contingencies	1,400	0	0			
				22,000	0	0
Deduct the Moiety, as at least this Portion is considered to be occasioned by the appro- priation of the Colony as a place of Punishment, and therefore chargeable to the Home Government	11,000	0	0			
				11,000	0	0
Civil Engineer (being a Military Officer) and Establishment	2,280	0	0			
Forage and Lodging Allowances	140	0	0			
Contingencies	80	0	0			
				2,500	0	0

ESTIMATE of the Annual Expense of the several Public Departments and Establishments, which form a charge on the Colonial Revenue of New South Wales—*continued*.

1827.
5 Oct.

Department or Establishment.	Amount. £ s. d.	Total. £ s. d.	Estimate of annual expenditure on public departments.
Surveyor of Roads and Bridges and Establishment..	1,070 0 0		
Forage Allowances	320 0 0		
Miscellaneous Expenses	180 0 0		
		1,570 0 0	
Mineral Surveyor		500 0 0	
Colonial Botanist and Establishment at Sydney and Parramatta		350 0 0	
Government Printer; Printing the Public Documents, Forms, Newspapers, etc.		1,500 0 0	
Superintendent of Government Clocks		75 0 0	
Superintendent of Government Slaughter Houses ..		105 0 0	
Master Attendant and Establishment—			
Light House and Telegraphs	1,450 0 0		
Contingencies	50 0 0		
		1,500 0 0	
Colonial Store Department and Establishment		240 0 0	
Barrack Master and Serjeant		325 0 0	
Superintendent of Ordnance Stores		100 0 0	
Pay and Clothing of the Two Royal Veteran Companies	5,240 0 0		
Rations, the Women and Children being numerous	2,890 0 0		
Forage and Lodging Allowance	145 0 0		
Contingencies	70 0 0		
	8,345 0 0		
Deduct the Amt. of their Half Pay and Pensions say	2,660 0 0		
		5,685 0 0	
Pay and Clothing of the Company of the Royal Staff Corps	2,535 0 0		
Rations deducting Stoppages	350 0 0		
Forage and Lodging Allowances	448 0 0		
Contingencies	27 0 0		
		3,360 0 0	
Pay of His Excellency the Governor's Body Guard..		85 0 0	
Benevolent Asylum		1,400 0 0	
Rations for Objects of Charity		400 0 0	
Presbyterian Clergy		400 0 0	
Roman Catholic Clergy and Schools		180 0 0	
Observatory at Parramatta		400 0 0	
Government Pensions		2,050 0 0	
Colonial Agent in England		600 0 0	
Total estimated expense of the Several Establishments		77,895 0 0	
Supplies.			
Fuel and light for Public Offices	1,000 0 0		
Lime and Firewood for Burning Brieks	2,400 0 0		
Miscellaneous Articles	800 0 0		
		4,200 0 0	
Total estimated Annual Expense ..		£82,095 0 0	

The foregoing Estimate is not to be considered as exhibiting the exact fixed Expense of each Establishment, as, from peculiar Circumstances and from the Establishments having been necessarily under Revision, the expenses of each are unavoidably subject to be changed from time to time, and must continue to be so, until they shall have attained such a state of efficient organisation, as is necessary for carrying on the Public Service in a satisfactory Manner. Every possible attention, however, is paid to keep the Expenditure within reasonable limits; and no increase is allowed till it has been shown that there exists a positive necessity for granting it.

The Expenses of Penal Settlements and of the Salaries of all Persons, exclusively employed in the Superintendence and care of Convicts, are now defrayed by the Commissariat Department from Funds, provided by the Lords Commissioners of His Majesty's Treasury on the Principles, explained in Mr. Hay's Letter of 9th March. 1826.

[Enclosure No. 2.]

1827.
5 Oct.
Abstract of
colonial
revenues.

ABSTRACT of the Colonial Revenues of New South Wales for the
Year ended 30th September, 1827.

Head of Revenue.	Amount under each Head.			Totals.		
ORDINARY.	£	s.	d.	£	s.	d.
Duties on Imported Spirits	38,978	13	7½			
Do. on Spirits distilled in the Colony	2,450	14	7			
Do. on Tobacco				41,429	8	2½
Ad Valorem Duty on Goods of Foreign Produce ...				5,559	19	0
Wharfage				3,115	3	9½
Light House Duty				1,886	11	7
Fees on the Entry and Clearance of Vessels	219	6	0	182	6	8
Do. on Custom House Permits and for Bond and Port Regulations	96	2	0			
Do. on Registering Vessels	8	5	0			
Auction Duties				323	13	0
Proceeds on the Sale of Coals at Newcastle				589	2	10½
Crown Lands—Proceeds of Land Sold	3,547	18	10	1,254	2	0
Quit Rents	1,285	8	0			
Proceeds of Cedar Cut on Crown Lands	1,078	2	0			
Licenses for Retailing Spirits	3,913	4	9	5,911	8	10
Hawking	21	13	4			
Carts	9	6	4			
Rents of Tolls and Ferries	2,074	6	0	3,944	4	5
Market Duties	725	9	7			
Government Gardens	200	11	8			
Government Windmill	178	15	0			
Military Canteen	249	3	4			
Slaughtering Duties				3,428	5	7
Fees of The Colonial Secretary's Office	377	18	0	21	17	0½
The Office of Registrar of Supreme Court ..	1,143	15	11			
The Office of Master of Do. ..	101	16	6			
The Surveyor General's Office	18	3	9			
The Sheriff's Office	622	4	1			
Collected by the Clerks of the several Benches of Magistrates	551	14	5½			
Fines Collected by the Sheriff	174	4	3	2,815	12	8½
Collected by the Clerks to the several Courts of Magistrates	597	8	9			
Amount of Ordinary Revenue ..				771	13	0
				71,233	8	8½
EXTRAORDINARY RESOURCES.						
Hire of Convict Mechanics (now discontinued) ...				320	3	10
Proceeds of the Sale of Government Stock	2,207	11	5½			
Do. of various Articles sold and Work performed	318	18	6½			
Services of Government Stallions				2,526	9	11½
Barraek Damages				151	6	8
Sums taken from Persons Convicted of Felony, and other Crown Prisoners				79	8	4½
Repayments and Sums Refunded				28	2	11½
				131	3	3
Amount of Extraordinary Resources ..				3,236	15	0½
Total Revenues ..				74,470	3	9
Deduct One Eighth of the Net Amount of Duties, payable to the Trustees of the Corporation of the Church and School Lands..				5,595	12	0
Total of Net Amount of Revenues applicable to the purposes of the Local Government				£68,874	11	9

STATEMENT of the Colonial Revenues of New South Wales for the Year ended 30th September, 1827, distinguishing the Amount for each Quarter.

1827.
5 Oct.

Statement of
colonial
revenues.

Quarter ended on	Ordinary Revenue.	Extraordinary Resources.	Totals.
	£ s. d.	£ s. d.	£ s. d.
The 31st December, 1826.....	17,940 6 8 $\frac{3}{4}$	1,190 3 7 $\frac{1}{4}$	19,130 10 4
„ 31st March, 1827.....	16,039 5 3 $\frac{1}{2}$	84 17 8	16,124 2 11 $\frac{1}{2}$
„ 30th June, 1827.....	16,399 14 3	176 15 7 $\frac{1}{4}$	16,576 9 10 $\frac{1}{4}$
„ 30th September, 1827.....	20,854 2 5 $\frac{1}{4}$	1,784 18 2	22,639 0 7 $\frac{1}{4}$
Totals ...	71,233 8 8 $\frac{1}{2}$	3,236 15 0 $\frac{1}{2}$	74,470 3 9
Deduct One-eighth of the Net Amount of Duties, payable to the Trustees of the Corporation of the Church and School Lands			5,595 12 0
Total Net Amount of Revenues.....£			68,874 11 9

[Enclosure No. 3.]

ESTIMATE of the Annual Expense of the Maintenance and Support of *Convicts* and Penal Settlements in New South Wales and its Dependencies, which will necessarily form a Charge on His Majesty's Treasury in England.

Estimated
annual
expenditure
on convicts
and penal
establishments.

£80,263 19s. 5d.

Distribution of the above Sum.

Head of Expense.	Amount.
	£ s. d.
Superintendence, Management, and Medical Treatment of Convicts..	11,163 19 5
Rations of Provisions and Medical Comforts	44,500 0 0
Fuel and Light	800 0 0
Cost of Stores and Articles, which it will probably be necessary to Purchase in the Colony, in addition to those supplied from England	3,700 0 0
Wages and Victualling of the Officers and Crews of Colonial Vessels, employed in Supplying the Penal and Other Out Settlements ..	6,600 0 0
Expenses of the Ordinary Repairs and Wear and Tear of Vessels, of which no fewer than Seven, belonging to the Colonial Government, are necessarily employed owing to the great increase of Settlements on the Coast, now Eight in number, most of which are very remote from the Seat of Government. The Cost of Vessels alone during the last Twelve Months has amounted to £3,695	2,500 0 0
Moiety of the Expense of the Police Establishment, which portion at least of such Expenses is considered to be occasioned by the appropriation of the Colony as a place of Punishment for Persons, Convicted of Offences in England	11,000 0 0
Total Estimated Amount ..	£80,263 19 5

The foregoing Estimate comprises the Annual Expenses only, which the Commissariat will most probably be called upon to disburse within the Colony, and does not, therefore, include the value of Stores to be Supplied from England, the Amount of which cannot be ascertained here.

According to the Estimate of the Deputy Commissary General, he will further have to draw on His Majesty's Treasury for about £50,000 Annually to enable him to Disburse the Pay and Allowances of the Troops and Military Departments, Military Pensions, Rations, etc.; but, as it is presumed that this Amount will be provided for in the Army Estimates, it has been thought unnecessary to include it in the Estimate now Submitted.

[Enclosures Nos. 4 and 5.]

1827.
5 Oct.
Enclosures.

[These were copies of letters from Messrs. Macleay and Lithgow to Governor Darling, dated 23rd November, 1826, and 26th February, 1827; see page 771, volume XII, and page 144.]

[Enclosure No. 6.]

[This contained copies of general orders, dated 31st March, 1810, and 21st June, 1817. By the first order, one fourth of the revenue from customs and duties was paid to the credit of the orphan fund; by the second, the proportion was reduced to one eighth.]

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 100, per ship Elisabeth.)

6 Oct.

My Lord,

Parramatta, 6th October, 1827.

Annual
expenditure
on convicts and
outlying
settlements.

I do myself the honor, in consequence of a communication from the Under Secretary of State for these Colonies, to transmit to your Lordship a detailed Estimate of the Annual Expense of the several Establishments, which are considered chargeable to the Home Government, being either exclusively employed in the management of Convicts, or formed for purposes not immediately connected with the Colony. I allude to the Settlements, recently established at Western Port, King George's Sound, Melville Island, and Fort Wellington. These, though not Penal Settlements, consist inclusively of the Troops and Prisoners of the Crown, sent for the purpose of forming the Establishments directed to be made at the respective places by His Majesty's Government, and the Expenses are consequently disbursed by the Deputy Commissary General, who draws for the amount on the Lords Commissioners of His Majesty's Treasury.

It will be observed that the Estimate, now enclosed, exceeds by about £2,500 the amount of that, transmitted with my private letter to Mr. Hay of the 6th of March last. This is occasioned chiefly by including the pay of the Individuals, employed in the public Establishments of the above Settlements, the proposed increase of the Salary of the principal Superintendent of Convicts, and a trifling addition to the salaries of some of the Superintendents of the Agricultural and Stock Establishments, those Salaries not having been permanently fixed, when I last had the honor to write on this subject.

As the subordinate appointments in the Convict Establishments are held by Prisoners of the Crown, who from necessity

are frequently changed, I have been induced to think your Lordship would dispense with my forwarding the names of the several Individuals, particularly as the enclosed Estimate contains every other information.

I have, &c.,

RA. DARLING.

1827.
6 Oct.

[Enclosure.]

[A copy of the estimate, amounting to £11,163 19s. 5d., for the civil establishment, exclusively engaged in the superintendence and management of convicts, and for outlying settlements, will be found in a volume in series II.]

GÖVERNÖR DARLING TO VISCOUNT GODERICH.

(Despatch No. 101, per ship Elisabeth.)

My Lord,

Parramatta, 8th October, 1827.

8 Oct.

My previous communications on the subject of the Custom House Establishment will have put your Lordship in possession of the arrangements made, by the appointment of the several Officers, for the discharge of the duties of that Department. I have now the honor of submitting for your Lordship's consideration copies of the Instructions, which have been framed for the guidance of the Collector and Comptroller, in which, also, the more important duties of the subordinate officers are enumerated and prescribed.

Instructions
to officers
of customs
department.

In framing these Instructions, it has been considered of importance to assimilate the practice here to that of the Customs in England, so far as this practice was either known or could be inferred from the Acts of Parliament for consolidating the Laws of the Customs, which were passed in the year 1825; and I beg to remark that, in transmitting these Instructions to your Lordship, I have as much in view the improvement of what may be found defective or objectionable, as the confirmation of such parts of them, as your Lordship may deem proper to sanction.

I have, &c.,

RA. DARLING.

[Enclosures.]

[A] INSTRUCTIONS for the Guidance of the Collector of the Customs for Port Jackson, New South Wales.

[B] INSTRUCTIONS for the Guidance of the Comptroller of Customs for Port Jackson, New South Wales.

[Copies of these departmental papers will be found in a volume in series II.]

1827.
9 Oct.

GOVERNOR DARLING TO VISCOUNT GODERICH.
(Despatch No. 102, per ship Elisabeth; acknowledged by Sir George Murray, 4th June, 1828.)

My Lord,

Parramatta, 9th October, 1827.

Remuneration
granted to
J. Busby.

I do myself the honor to state, in reply to Earl Bathurst's Dispatch No. 25, that the reason of the higher rate of remuneration, that is £2 2s. per diem, having been granted to Mr. Busby, the mineral Surveyor, for the period of his Employment beyond his engagement with the Government, was that Mr. Busby made it appear he had been paid at that rate in Scotland, when employed under similar circumstances. Mr. Busby has always stated to me that the reason of his having engaged with Government at so low a rate as £1 1s. per diem for two hundred days in each year was in consequence of the indulgence, he received in having passages provided for his numerous family from England to this Country, and that the period of that engagement having expired he now considers he has a claim to a more ample remuneration for his services.

Fixed salary
for J. Busby.

My Lord Bathurst is pleased to suggest, in the Dispatch to which I have now the honor to reply, that Mr. Busby's services should be wholly secured, but that his salary should not exceed £300 a year.

Your Lordship will have been informed, by my Dispatch No. 71, that Mr. Busby had been already engaged at a Salary of £500; and I persuade myself, when the nature of the duties, in which Mr. Busby is employed, carrying on the necessary works for introducing water into Sydney, as stated in my Dispatch above referred to, and superintending the Coal Mines, which are objects not only extremely important in themselves, but which there is no other individual in the Colony capable of undertaking, that it will appear to your Lordship Mr. Busby is not overpaid, and at any rate that the Government had no alternative.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO VISCOUNT GODERICH.
(Despatch No. 103, per ship Elisabeth.)

10 Oct.

My Lord,

Government House, 10th October, 1827.

Transmission
of minutes of
executive
council.

I have the honor to forward herewith, in obedience to the 8th Clause of His Majesty's Instructions to me, dated the 17th of July, 1825, a full transcript of the Minutes of the Proceedings of the Executive Council of this Government for the half year ending the 30th of June, 1827.

I have, &c.,

RA. DARLING.

[Enclosure.]

[Copies of these minutes will be found in a volume in series II.]

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch marked "Separate," per ship Elisabeth; acknowledged by Sir George Murray, 30th August, 1828.)

1827.
10 Oct.

My Lord,

Parramatta, 10th October, 1827.

It was my duty, on a former occasion, to bring under the consideration of Your Lordship's predecessor the circumstance of a very indecorous proceeding in the Supreme Court, on the part of Mr. Wentworth in the examination of Archdeacon Scott, in a Trial at which Mr. Justice Stephen presided.

It now becomes my duty to state to your Lordship that, from the latitude which has been allowed in this respect, both Mr. Wentworth and Dr. Wardell are in the habit of indulging in the most indecent invectives against the Governor and the measures of the Government in open Court, without comment or observation from the Bench.

Abuse of
governor and
government in
open court by
W. C. Went-
worth and
R. Wardell.

Your Lordship will be made acquainted with an instance of this nature, on reference to the concluding part of the 1st Column and to the 2d Column of page 647 of the *Monitor* newspaper, herewith enclosed. Mr. Wentworth, in addressing the Jury on behalf of the Editor of the above Paper, against whom various informations had been filed for Libels on the Government, designated the measures of the Government as "diabolical and damnable," and continued in a stream of the most unqualified abuse of the Governor's proceedings to the conclusion of his speech.

Your Lordship will be informed of another case of this nature by the accompanying "Sydney Gazette" and the "Gleaner," both of which Papers comment in their Leading Articles on the "violent invectives" and "offensive epithets," in which Dr. Wardell had been permitted to indulge, and to apply to me as the Governor of this Colony, without restraint or check from the Court.

The Article in the *Sydney Gazette* was written, I understand, by a Gentleman of the Bar, recently arrived in the Colony, who happened to be in Court at the time the epithets applied to me by Dr. Wardell were made use of. The correspondence of the statements in the two Papers leaves no room to doubt the correctness of their representation of what passed. But I am assured by others, who were present, that they were strictly correct, and that the indignation evinced was universal, with the single exception of the Judges who presided on the occasion.

I shall not presume, my Lord, to account for the motives, which may have influenced the conduct of Judge Stephen, nor will I pretend to determine whether it is consistent with the duty of a Judge to interfere on such occasions, or enquire whether

1827.
10 Oct.

Effect of
license
permitted to
counsel by
Judges.

it is the practice of the Judges in other Colonies, as in New South Wales, to permit of the Courts, over which they preside, being made a theatre for vilifying the Governor and Government of the Colony, and holding up both to the Contempt and hatred of the Public.

Although I do not pretend, my Lord, to decide upon these points, I cannot hesitate to pronounce that there is no colony under His Majesty's Government in which such proceedings can be more, if so injurious, as in this. I need not ask what must be the consequences, when Convicts, Emancipists, in short all classes, hear, unchecked by the Judges selected by His Majesty to administer justice to them, His Majesty's immediate representative in the Colony openly, and at one of the most solemn Tribunals of the Constitution, designated as a "Tyrant," a "Monster," and a "Scoundrel," and his Acts represented to the Public as "diabolical" and "damnable."

I shall abstain from any further comment or observation. But should your Lordship feel any surprize that I have not communicated with Judge Stephen, previous to making this Report, I must refer your Lordship to my correspondence* with Earl Bathurst, by which it will be seen that Judge Stephen has on a former occasion resisted my right as Governor of requiring an explanation of his conduct, and that more recently, when I communicated to him a complaint made by Archdeacon Scott, he declined transmitting through me his reply to the Archdeacon's representations.

I have, &c.,

RA. DARLING.

P.S.—I beg to enclose the Sydney Gazette of the 19th of Sept., in which the conduct of both Mr. Wentworth and Dr. Wardell on the occasion, alluded to in this letter, is noticed. See 2d page 4th column.

R.D.

[Enclosures.]

[Copies of the issues† of the "Monitor," dated 17th September, of the "Sydney Gazette," dated 19th and 21st September, and of the "Gleaner," dated 21st September, 1827, were enclosed with this despatch.]

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 104, per ship Elisabeth.)

11 Oct.

My Lord,

Parramatta, 11th October, 1827.

Arrival of Revd.
C. P. N. Wilton.

I do myself the honor to acquaint your Lordship, in reference to your Dispatch No. 88 of last year, that the Reverend Mr. Wilton and his wife have arrived, and have been placed in

* Note 124.

† Note 125.

the situation to which your Lordship has been pleased to appoint them at the Female Orphan School. I am, however, sorry to add that Mrs. Wilton's state of health has been such, as to prevent her from discharging her duty, and I apprehend, from the apparent delicacy of her constitution, that there is but little chance of Mrs. Wilton's ever being equal to the situation.

1827.
11 Oct.

Ill-health of
Mrs. Wilton.

I have at the same time much satisfaction in stating to your Lordship that the Establishment generally is materially improved, since the date of my last Report, which is in a great measure to be ascribed to the exertions of a Committee of Ladies, who very kindly offered their assistance to the Archdeacon in superintending the conduct of the School, and who from obvious reasons must be more competent to such an undertaking than any Gentleman can possibly be. The employment of a very active intelligent person, a Mrs. Ellis, in consequence of Mrs. Wilton's illness, has also contributed to this important object.

Improvements
at female
orphan school.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 105, per ship Elisabeth.)

My Lord, Government House, 12th October, 1827.

12 Oct.

I have the honor to acquaint your Lordship that, in consideration of the correct conduct of Matthew Gregson, Junior, since his arrival in the Colony, and the services rendered by him as a clerk in one of the Public Offices, I have granted him a conditional pardon, the necessary Instrument being herewith transmitted in conformity with the 35th Clause of the Act of 4th Geo. 4th, Chap. 96; and I humbly beg to recommend the same for His Majesty's gracious allowance.

Pardon granted
to M. Gregson.

I have, &c.,

RA. DARLING.

[Enclosure.]

[*The instrument of pardon was dated 9th February, 1827, and was in the usual form.*]

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 106, per ship Elisabeth; acknowledged by Sir George Murray, 31st May, 1828.)

My Lord, Parramatta, 13th October, 1827

13 Oct.

I have the honor to report to your Lordship that I have felt it necessary to authorize the purchase of a Brig, the Lucy Ann, for the service of the Government, without waiting for your

Purchase of
brig Lucy Ann.

1827.
13 Oct.

Lordship's sanction as required by my Instructions. The cost of this Vessel is £2,170. Others have also been purchased during the present and the last year, vizt.

Purchase of
schooner and
brig.

Schooner Alligator, 91 tons, £320; Brig Governor Phillip, 177 tons, £1,200; and I request your Lordship's authority for the amount being charged in the public accounts.

Situation
of coastal
settlements in
Australia.

My letter to Mr. Hay of the 14th of May last will have put your Lordship in possession of the situation of the Settlements on the Coast with reference to the Seat of Government. Most of them are very remote from Sydney, and in some cases* a period of two and three months is necessary to communicate with them, as will be seen by my letter to Mr. Hay above referred to. I am not at the same time disposed to recommend these being abandoned, as their possession may prevent any other Power from settling on the Coast. I would on the contrary urge the expediency of Swan River being settled, as, from the favorable nature of Captain Stirling's Report, which accompanied my Dispatch No. 56,† it is not improbable that it may attract the French to settle in that part.

The present Settlements being retained, it is not likely that any foreign Power would attempt to establish itself in New Holland.‡ The Western Coast, I apprehend, holds out no inducement.

The accompanying Sketch will put your Lordship in immediate possession of the relative Situations of the several Settlements on the Coast, seven in Number, vizt.

Newcastle, Port Macquarie, Moreton Bay, Raffles Bay, Melville Island, King George's Sound, and Western Port, to which must be added Norfolk Island.

Vessels
employed in
service of
coastal
settlements.

The number of Vessels, kept by the local Government to supply these Settlements to convey Prisoners and keep the necessary Communication, in order to be satisfied of their welfare, will not be considered too great. They are as follows, vizt.

The Barque Lucy Ann, 208 Tons; The Brig Governor Phillip, 177; The Brig Amity, 148; The Brig Mary Elizabeth, 88; The Schooner Isabella, 116; The Schooner Alligator, 91; The Cutter Mermaid, 92; The Cutter Regent Bird, 23.

Two of these are necessarily stationed at Melville Island and Raffles Bay, and the rest have ample employment in keeping up the Communication with these and the other Settlements.

For some time previous to my arrival, no intelligence had been received from Melville Island, nor indeed was any obtained for a considerable period after. The anxiety, which that circumstance

* Marginal note.—Raffles Bay, Melville Island, King George's Sound.

† Note 126. ‡ Note 127.

occasioned in the mind of your Lordship's predecessor, was manifested by the communications* which I received respecting the comfort and prosperity of the Settlement.

1827.
13 Oct.

Since that period, three distinct Settlements have been added to the Government. I advert to this circumstance, as much with a view of pointing out to your Lordship that the expenses of the Government generally must be increased by these Establishments, and considerably too, as well as to account for the additional number of Vessels employed. I can conscientiously assert that no individual in any situation could be more economical than I am in the expenditure of the Public Money. But an injudicious economy in these respects might expose the Settlements to want, and His Majesty's Government, more than the local Authority, to blame. Having adverted to the expediency of retaining the distant Settlements, I feel it my duty to submit to your Lordship the copy of a letter from Major Campbell, the commandant of Melville Island. It is evident from this communication that motives of policy alone can render it desirable to keep Possession of that Settlement, there appearing no other inducement whatever to retain it, but on the contrary strong reasons for immediately abandoning it.

Expenditure
increased
by new
settlements.

Report from
Melville island.

I have not selected any passages of Major Campbell's report as more particularly deserving attention. It is generally interesting, and will be found extremely useful in forming an opinion as to the expediency of retaining Melville Island.

Your Lordship will perceive by the Report that Major Campbell is a very intelligent person, and that he has exerted himself with much judgment and zeal in the performance of the duties of his Command. I regret to add that he is very desirous to be relieved.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

[A copy of this sketch is not available.]

[Enclosure No. 2.]

[A copy of major Campbell's report, dated 8th April, 1827, will be found in a volume in series III.]

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch marked "Separate," per ship Mermaid; acknowledged by Governor Darling, 30th July, 1828.)

Sir,

Downing Street, 15 October, 1827.

15 Oct.

I have the honor to acknowledge the receipt of your Dispatch of the 11th March, reporting the circumstances attending

Despatch
acknowledged.

1827.
15 Oct.

Approval of
dismissal of
H. Dangar.

the misconduct of Mr. Henry Dangar of the Surveyor General's Department in making his public situation subservient to his private views and interests.

As I fully concur with you in opinion that nothing short of the dismissal of persons from these employments, who shall be found guilty of practices of the nature of those, which have been so conclusively proved against Mr. Dangar, will operate as a sufficient check against similar proceedings in future, I approve of Mr. Dangar's removal from the service; and I have further to acquiesce in your recommendation that he should not be allowed to retain possession of the Land, which he appears so very improperly to have appropriated to his own use.

I have, &c.,

W. HUSKISSON.

UNDER SECRETARY HORTON TO GOVERNOR DARLING.

(Despatch per ship Hoogley; acknowledged by Governor Darling, 26th February, 1828.)

Sir,

Downing Street, 15 October, 1827.

Instructions re
preparation of
requisitions.

The imperfect manner, in which the Requisitions for Stores for the Service of Van Diemen's Land have been prepared, so far as regards the description and number of the Articles required, having occasioned on the part of the Board of Ordnance the inclosed representation on that subject, I am directed by Mr. Secretary Huskisson to transmit a Copy of the same to you with the request that, in preparing any future Requisition of this kind for New South Wales, care may be taken that the suggestions of the Board of Ordnance be complied with.

I have, &c.,

R. W. HORTON.

[Enclosure No. 1.]

MR. T. F. LEWIS TO ———.

Sir,

Treasury Chambers, 11th Octr., 1827.

With reference to your letter of the 27th August last, enclosing a Requisition for Stores required for Van Diemen's Land for the year 1828, I have it in command from the Lords Commissioners of His Majesty's Treasury to transmit to you Copy of a Letter, dated 28th Ult., from the Office of Ordnance on this subject; and I am to request you will move Mr. Secretary Huskisson to make a communication to the Governors of New South Wales and Van Diemen's Land in conformity with the suggestions of the board of Ordnance.

I am, &c.,

T. FRANKLAND LEWIS.

[Enclosure No. 2.]

1827.
15 Oct.

MR. G. BUTLER TO —————.

Instructions re
preparation of
requisitions.

Sir,

Office of Ordnance, 28 Sept., 1827.

Having submitted to the Board your letter of the 12th Inst., enclosing a requisition for Stores for Service at Van Diemen's Land for the year 1828, I have their Commands to acquaint you that they have given orders for the supply of the same.

With respect to the 100 sheets of Copper and 2 Tons of Sheet-Lead, I am directed to observe that no dimensions are given of the Lead, and that neither weight nor dimensions are given for the Copper, Sheets of which may be of various dimensions

The Board, however, have directed an assortment of the above Articles to be sent out; and I am to request that the proper Officers at New South Wales and Van Diemen's Land may be directed to be more minute in their description of the Articles in their future requisitions, and when tools are wanted to enumerate the Articles, in lieu of demanding them in "Sets," also to discontinue the mode of stating in "Dozens" the number of some of the Stores. We have, &c.,

G. BUTLER for the Secretary.

UNDER SECRETARY HORTON TO GOVERNOR DARLING.

(Despatch per ship Hoogley; acknowledged by Governor Darling.
25th February, 1828.)

Sir,

Downing Street, 20th October, 1827.

20 Oct.

I am directed by Mr. Secretary Huskisson to transmit to you the inclosed Copy of a letter, which has been addressed to him on behalf of the Australian Trading Company,* who are desirous of obtaining the means of erecting a Warehouse on a part of the Government Property at Sydney, which, it is stated, is no longer wanted by the Government; and I am to request that you will be pleased to favour me with a Report on this subject.

I have, &c.,

R. W. HORTON.

[Enclosure.]

MR. R. BROWN TO THE RIGHT HON. W. HUSKISSON.

Sir,

Leith, 8th October, 1827.

Five years ago a Joint Stock Company was established here under the designation of the Australian Company, and two years after they obtained an Act of Parliament granting them

Formation
of company.

* Note 129.

1827.
20 Oct.

Shipping
employed by
company.

Warehouse at
Hobart.

Site for
warehouse
required at
Sydney.

certain privileges. Their object is to improve and facilitate the intercourse betwixt the Mother Country and the Colonies of New South Wales and Van Diemen's Land.

The Company have now been upwards of four years in operation, and have nearly Two Thousand Tons of Shipping, engaged in the Trade, with an intention of an immediate increase. They have had many difficulties to encounter in the Colonies, and none greater than the want of Warehouses. At Hobart Town, they have got a grant of a Site, upon which they have erected a Building at an expense of Four Thousand Pounds. This will answer all their purposes in that Colony; but they cannot obtain at Sydney any Suitable Situation, built, or to build upon, that side of the Cove being wholly Occupied.

The other side is what is called the Government Domain,* bounding the park attached to the Government House, not now wanted for any purpose of Government, the Governor having removed his residence to Paramatta.

This side, therefore, being at the disposal of Government, and absolutely wanted for the accommodation of that rapidly increasing Colony, the Australian Company most respectfully crave a grant of a Site Sufficient to erect a Warehouse in a convenient and fit Situation.

The Company have made great Sacrifices of their property in many points of view for the benefit of the Colonies; of which, they shall now only mention one, that is, they have sent and continue to send there many respectable Mechanicks and their families, having only their obligation to pay by Instalments at distant periods the price of their Passage. In this way, they have a great sum owing them by the Colonists, a considerable part of which they are reconciled ultimately to lose.

Sir, &c.,

ROBERT BROWN.

UNDER SECRETARY HORTON TO GOVERNOR DARLING.

(Despatch per ship Asia; acknowledged by Governor Darling,
25th May, 1828.)

Sir,

Downing Street, 20th October, 1827.

Proposal for
exploring
expedition.

I am directed by Mr. Secretary Huskisson to transmit to you the inclosed Copy of a letter from Mr. Ballantine, proposing an expedition into the interior of "New Holland for the purpose of exploring that Country. I also transmit a Copy of the reply,

* Note 130.

which has been given to his application; and I am to request that you will be good enough to report to me your opinion with reference to the proposed undertaking. I have, &c.,

1827.
20 Oct.

R. W. HORTON.

[Enclosure No. 1.]

MR. J. BALLANTINE TO RIGHT HON. W. HUSKISSON.

Sir, Tradestown, Glasgow, 20th Octr., 1827.

I have respectfully used the freedom to transmit for your consideration the inclosed Memoir on the subject of a projected expedition for exploring the interior of Australasia* or New South Wales. Proposal for
exploration of
Australia.

In an age when discoveries in other quarters of the Globe are so ardently pursued, it is trusted that you will not undervalue a proposal, which has for its object the ascertainment of the nature of a Country, on which an interesting and rapidly increasing British Colony has been seated about forty years.

If you should consider the subject worthy of interest, the writer of this need scarcely remark that he would feel gratified in forming one in the expedition. From the circumstance of having resided for some time in Jamaica, and afterwards for a considerable time at the Cape of Good Hope, during which he made a journey from Cape Town to the Northward, parallel with the West Coast till he reached the Latitude of Angra Pequena Bay, he thinks that, in so far as climate and fatigue may be concerned, he is capable of withstanding their effects, without attaching any weight to his experience derived from observing Countries, in somewhat similar parells of latitude with that proposed to be explored.

And it may be added that, among the beneficial measures which are so confidently anticipated from your administration of the Colonies, it is trusted that you will prove a friend to geographical science, especially when so nearly connected with a British Settlement; and that respecting this fifth Continent you will not allow so large a space of Land to remain much longer a blank on the Maps, or marked with the denomination of unknown Country; but that, in regard to the interior, you will complete the discovery, as fully as what the Naval Department effected by the laborious survey of its shores. In the hope that it is reserved for you to obviate so great a desideratum in geography, and that the interior of Australasia shall soon assume a character as decided as its Coasts.

I am, &c.,

JS. BALLANTINE.

* Note 131.

1827.
20 Oct.

Proposals for
exploration of
interior of
Australia.

[Enclosure No. 2.]

MEMOIR of a Projected Expedition* for the Discovery of the Interior of Australasia or New Holland.

To The Right Honorable William Huskisson, one of His Majesty's Principal Secretaries of State for the department of War and the Colonies.

AFTER an uninterrupted possession of New Holland for nearly forty years, it surely does not reflect credit on the enterprising spirit of Britons that only a corner of this immense Island should have been explored, and that conjecture solely should supply the place of certainty regarding the interior of the country. The deficiency of any extensive rivers reaching the coasts, in a land not sparingly supplied with rain, is a circumstance so very remarkable, that the cause should not remain hypothetically attributed to an inland sea, supposed to receive such rivers; for the fact previous to this period might have been ascertained. With a view towards effecting this end, and probably making discoveries, which may become advantageous to the Colony of New South Wales as well as to the mother country, the present Memoir is submitted for your consideration.

That journies from New South Wales have been undertaken the memorialist is aware, and that the issue of them, to the extent they went, were so far satisfactory; but, if not so much as was anticipated, the cause ought partly to be attributed to the want of camels, animals well known to be the best adapted for travelling in such a country as Australasia. Another cause, which will always tend to retard journies of discovery proceeding from the Colony, arises from the party employed being necessitated to carry with them provisions, not only for the outward, but also for the homeward route; this objection is certainly of considerable weight, while the only mode of obviating it appears to consist in commencing the journey from the west coast, and proceeding in an eastern direction to the Colony. The journey is unquestionably a long one; but every day's travel would bring the adventurers nearer to a termination of their labours and nearer to a civilized country, whereas the reverse is the case with any expedition sent from the Colony.

The practicability of such an undertaking seems to admit of little dubiety, when the arduous and very long journeys across the northern portion of America are taken into consideration. In travelling in North America, many difficulties required to be overcome, arising from the severity of the climate and the warlike disposition and treachery of the Indians. In journeying across Australasia, none of these difficulties may be anticipated,

* Note 132.

for the climate, though warm, is not so far as known of an unhealthy description, and the natives are in such a low grade of civilization, and possessed of so low warlike attainments, that a small force would be enabled to pass through their country without fear, or at any rate, with due precaution, without experiencing much danger.

1827.
20 Oct.

Proposals for
exploration of
interior of
Australia.

In tracing out a route from the west, the one, which nature seems to have rendered apparently the most practicable and the best adapted for effectually gaining a knowledge of a large tract of the country, is by landing about the 20th degree of south latitude and stretching a course eastwardly, tending to the southward as nearly as the nature of the country will admit, till the most westwardly portion of the inhabited spots of the Colony is attained. The reason for giving this course the preference is owing to the circumstance of the coast having trended so far to the east, that what is added in latitude is nearly diminished from the longitude. Besides, a course anything like parallel with the Colony would only skirt the southern extremity of the country, and could not possibly afford much information regarding the interior; whereas the route proposed will tend to furnish a tolerably correct outline of a considerable tract of Australasia, and an idea of at least three and a half degrees of latitude within the tropics and about ten degrees to the southward will thereby be enabled to be formed.

In a direct line, about 2,000 miles may be considered the distance; but from obstacles, such as may arise from the fancied inland sea or lake, and from mountains, rivers, lakes, morasses, forests and other obstructions, which may be expected to be found in such a lengthened course, no exact data in consequence can be formed of the actual distance. In all probability, however, the deviations from a direct course will not in English miles make the total amount more than 3,000, and it may be less. In comparison with journies in America, it is not near the distance; and yet they were performed in safety even in a climate, surcharged with moisture at one season of the year, and covered with snow at another. It must, however, be confessed that, in America, the adventurers had advantages from water carriage, from the abundance of game, and from the circumstance of guides being easily procured from among the Indians, which in the proposed attempt must be left nearly altogether out of consideration. In Australasia, the climate may be regarded as favourable at all seasons, and no obstructions from this source can reasonably be anticipated; while Kangaroos may be so numerous in the interior as to prove a tolerable certain source of supplying the party with food.

1827.
20 Oct.

Proposals for
exploration of
interior of
Australia.

Altho' the coasts may consist of barren sand, yet without deviating from probability, it may be assumed as an implied fact that, after a short distance from the shores, the country in general consists of moderately fertile land at least; the experience derived from the Colony seems favourable to this conjecture; and from there being no discrepancy of rain, water as a physical result may be relied on with confidence.

None of the dangers, therefore, to which travellers are exposed in the sandy deserts of Arabia or Africa, are likely to be felt; neither is it probable that any natives, more warlike than those already seen in the Colony, will be encountered, and danger from them a very small force could easily avert.

From nature and from the natives, no feasible causes seem to operate as a barrier to obstruct the successful termination of such a journey. Everything rather is apparently in favour of the projected expedition, and, in the humble opinion of the memorialist, the attempt only requires to be made to prove fortunate.

The means for adequately effecting this end do not require to be great, altho', from the natives being somewhat treacherous towards unprotected individuals, some force will be requisite. With twenty men or even less, it may be presumed the country could be traversed from north to south and from east to west without any reasonable degree of fear from the inhabitants, and probably fifteen or sixteen are quite sufficient to accomplish the undertaking.

From the paucity of animals and from the almost total discrepancy of vegetables, fit for food, which, so far as known, are to be found in this country, no sustenance for the support of man can with certainty be relied on farther than to a partial extent. It is possible, however, that Kangaroos and fowls of various descriptions may abound in the interior in such numbers as may furnish a considerable supply to any adventurers. But, as it would be inadvisable to rely upon a supposition, which might have very little reality and which might frustrate the ultimate ends of the journey, it seems proper to guard against such an occurrence by the travellers carrying food with them.

This is the chief difficulty attending the undertaking; neither horses nor mules seeming adequate for the purpose during such a lengthened course, at any rate, that degree of reliance cannot be placed on their services in a country, altogether unknown and where guides may not be procured, which such an expedition would require. It is presumed, however, that Camels would afford a confident hope of enabling the journey to be effectually performed, and that with a prospect of security amounting almost to certainty.

That the climate and the country would agree with these animals from its similarity to their own appears to admit of no doubt.

1827.
20 Oct.

Proposals for
exploration of
interior of
Australia.

They could be procured at Mogodor, or any other place deemed advisable on the coast of Morocco, and carried out in the same vessel in which the adventurers might embark. The introduction of these animals into New South Wales will also eventually prove of very considerable benefit, for from what is already known of the Colony, without the aid of the Camel, little communication in the way of traffic either to or from the coast can be carried on with the interior country, already peopling, without such an enormous expense as almost to preclude intercourse of any description.

But, with the assistance of this animal, a continual intercourse will be the salutary effect at a comparatively trifling cost with the present mode, tending to the prosperity of the inland as well as of the coast inhabitants, and ultimately to the home country.

On the supposition that twenty persons were employed to carry the above project into execution, fourteen Camels appear sufficient to convey provisions, etc., supposing the journey to be about 3,000 miles. For, if this rough calculation should be any thing like nigh correct, the expedition would be concluded, if performed at the rate of twenty miles a day, in one hundred and fifty days. Probably, however, it would be finished in a shorter period; for twenty miles, where no formidable obstacles intervened, might be considered as the minimum of a day's travel, consequently sufficient time wd. be allowed for resting the party and the cattle, when necessary, from the overplus ground which would frequently be gained; but, even if it should in the execution prove considerably longer, the party, from frequently subsisting on Kangaroos, etc., during the journey, would lengthen out their rations. At this calculation, each Camel at the outset would have only to carry about 500 lbs., as pr. margin,* a burden much less than they are enabled to bear without injury, and which would every day be diminishing; whereby from them resources would be afforded for carrying water in parched places, or in conveying any of the party, who might become sick. And, if it was deemed necessary, a few horses could be procured at the Cape of Good Hope as an additional assistance towards enabling the adventurers more easily to perform the undertaking.

* *Marginal note.*—Bread 1 lb. pr. day for 20 men for 100 days, 3,000; Beef and pork after bones taken $\frac{3}{4}$ lb. pr. day, 2,250; Baggage each man 20 lbs., 400; Tents, Camp utensils, etc., 600; Ammunition and extras, 500; 6,750. 14 Camels.

1827.
20 Oct.

Proposals for
exploration of
interior of
Australia.

Altho' the prospects to be derived from the successful termination of such an expedition cannot be made the subject of calculation, our knowledge of the country will be increased, and an useful, nay an indispensable, animal will be introduced into the Colony. In addition to these, also, the right will be vested in Britain to the inland part of the country as the first discoverers, and at the same time an idea of the ultimate progress of the Colony to the westward will be enabled to be formed.

While these latter objects will be attained, perhaps other interesting discoveries may be effected to enhance the value of our present Colony, which from its situation in one of the finest climates in the world is capable of producing all the valuable products of every temperate climate, as well as numbers of those of tropical countries, and which already displays signs of becoming in the course of no great length of time one of the most inestimable appendages of the British Crown.

JAS. BALLANTINE.

[Enclosure No. 3.]

UNDER SECRETARY HORTON TO MR. J. BALLANTINE.

Sir,

Downing Street, 24 October, 1827.

Proposals to be
submitted to
governor.

In reply to your Letter of the 20 Inst., accompanied by a memoir on the subject of a projected Expedition for exploring the interior of New Holland, I am directed by Mr. Secretary Huskisson to acquaint you that he could not under any circumstances sanction an application of that nature without a previous communication with the Governor, explaining fully especially the object which you propose to accomplish.

I am, &c.,

R. W. HORTON.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 107. per ship Elisabeth.)

22 Oct.

Land claimed
by heirs of
W. Bligh.

My Lord,

Parramatta, 22d October, 1827.

I have the honor to transmit for your Lordship's information, in reference to a Despatch addressed to me by Earl Bathurst, dated the 18th January last, No. 3, on the subject of the land at Parramatta,* claimed by Admiral Bligh's Heirs, the accompanying copy of a letter from the Surveyor General, by which it appears that no money was ever expended either by the Admiral or his representatives in improvements upon the land in question.

I have, &c.,

RA. DARLING.

* Note 9.

[Enclosure.]

1827.
22 Oct.

SURVEYOR-GENERAL OXLEY TO COLONIAL SECRETARY MACLEAY.

Sir, Surveyor-General's Office, 10th October, 1827.

With reference to your Letter of the 8th instant, enclosing the copy of a Despatch from Earl Bathurst, in which it is stated that the family of the late Admiral Bligh have waived all claim, on the ground of right, to the land granted to that Officer in the Parramatta District (105 one hundred and five acres) in the year 1806, and which contains a request of information, whether any money was expended on the said Land during its occupancy by Admiral Bligh or his representatives, from the year above mentioned till it was resumed by Governor Macquarie in 1816, desiring me to report accordingly, whether any money was so expended, and if so the amount, as far as it may be practicable to ascertain it.

Report re
land granted
to W. Bligh.

I have the honor to inform you, for his Excellency's information, that it comes within my knowledge that no money was ever expended either by the late Admiral Bligh or his Representatives in improvements upon the Land in question.

I have, &c.,
J. OXLEY.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 108, per ship Elisabeth; acknowledged by right hon. W. Huskisson, 19th May, 1828.)

My Lord,

Parramatta, 23rd October, 1827.

23 Oct.

I have the honor to acquaint your Lordship that, in pursuance of the intention expressed in my Dispatch of the 10th of April last, marked "Separate," I have appointed Lieutenant Colonel Morisset to the charge of the Police Department, until some arrangement, which may be more agreeable to him, can be made for his employment. He appears to apprehend that his health will suffer from the application and confinement, which are necessary to the discharge of his duties.

Appointment of
J. T. Morisset as
superintendent
of police.

I have been induced to make this appointment from a consideration of its being an economical arrangement, as well as from the impression I had received of Colonel Morisset's qualification for the Office. Colonel Morisset's salary, as fixed by Earl Bathurst, is £600, which together with the Allowances he is entitled to by his Military rank amount to £863 8s. 4d.* per annum. The whole expense of the appointment of the present Commandant of Norfolk Island, being an Officer of this Command, is 10s. a day, £182 a year.

Salary of
J. T. Morisset;and of
commandant at
Norfolk island.

* *Marginal note.*—Salary, £600; Forage, £45 12s. 6d.; Rations for himself and 3 Servants, £57 15s. 10d.; lodgings, Coals and Candles, £160. Total, £863 8s. 4d.

1827.
23 Oct.

Saving effected
by appointment
of J. T. Morisset.

By employing Colonel Morisset in the Police, instead of sending him to Norfolk Island, a considerable saving has been made, the salary of the Superintendent of Police being £600 a year, which any other person must have received who might have been appointed. As Colonel Morisset would have drawn Rations for himself and family and an allowance of forage for a horse, in consequence of his military situation, I have felt it necessary to grant him these allowances in his present Employment, being certainly exposed to some additional expense on account of living; and those allowances of Forage and Rations are all that he receives beyond the usual remuneration of the Principal Superintendent of Police. But the saving to the Public by the present arrangement is £417 10s., being the difference between the Pay of the present Commandant of Norfolk Island and that which Colonel Morisset would have received in that capacity.

Exclusion of
women from
Norfolk island.

I now beg leave to refer your Lordship to my letter to Mr. Under Secretary Hay of the 10th February last, as explanatory of my reasons for not sending Colonel Morisset, who has a wife and family, to Norfolk Island. On perusing that letter, I am apprehensive I may have induced a belief I had changed the character of that Settlement more than is really the case. Norfolk Island had never been used, since its re-establishment, as a place of transportation for women; and all that I did was to remove from thence the wives of a few soldiers and overseers, about *six* I think in number. I was induced to this step from consideration to the women, who I thought had better not be exposed to the violence of the prisoners, and whose presence might perhaps be the means of exciting them to acts of outrage. I am at the same time very glad to find from Captain Donaldson, the late Commandant, who has recently arrived, that there is no reason to suppose that the Prisoners at that Settlement indulge the unnatural propensity, which the Prisoners have been occasionally accused of. He assures me that, during his command, which continued a year and a half, only one attempt of the kind had been discovered though the strictest watch had been kept.

Report on
morals of
convicts.

Objections to
presence of
women at
Norfolk island.

In a conversation I have had with Colonel Morisset, he appears to think there could be no objection to sending Women, sentenced by the Colonial Courts, to Norfolk Island. For my own part, I cannot understand on what feeling or principle such a proceeding would be justified, unless indeed it be admitted that an intercourse as promiscuous as that of the Beasts of the Field is unobjectionable. Your Lordship will be informed of the sensation which was created in Sir Thomas Brisbane's Administration by sending some women to Emu Plains,* one of our Government Establishments, when, from an idea of an unrestrained

* Note 76.

intercourse with the men being permitted, it was made a most serious charge against the Government. But it cannot require this instance to satisfy your Lordship that the measure of transporting women to Norfolk Island, where the male Prisoners, being in general men of desperate character, will soon be very numerous, would be as offensive to every feeling of morality as obnoxious to every principle of policy and good Government.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Elisabeth.)

Sir,

Parramatta, 25th October, 1827.

25 Oct.

I have the honor to forward the accompanying Papers, which I have received from Mr. Rumker, who has charge of the Observatory, containing the result of the Astronomical Observations of that Gentleman, with a view to their being delivered to the President of the Royal Society.

Transmission of astronomical papers.

As nothing has yet been determined respecting Mr. Rumker's situation, I propose bringing the matter before the Executive Council, in order that I may be better prepared to communicate with you respecting his appointment, salary, etc. I should have done this before, had not Mr. Rumker expressed some expectation that the Board of Longitude would have interested themselves in this matter, which not having been realized is alone the cause of the Delay that has taken place.

Official status of C. S. Rumker.

I have authorized the issue of £200 to Mr. Rumker on account of salary, and shall make such further advances as may be considered necessary until his salary is fixed.

I have, &c.,

RA. DARLING.

[Enclosures.]

[Copies of these papers will be found in a volume in series VI.]

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 109, per ship Elisabeth; acknowledged by right hon. W. Huskisson, 21st May, 1828.)

My Lord,

Parramatta, 26th October, 1827.

26 Oct.

I have the honor to report for your Lordship's information the death of Mr. John Campbell, one of the Commissioners for apportioning and valuing the Lands of the Colony, and to inform your Lordship that I have nominated Mr. John Stephen, Junior, son of Judge Stephen, to succeed Mr. Campbell, of which I hope your Lordship will be pleased to approve.

Death of J. Campbell.

Appointment of J. Stephen.

I have, &c.,

RA. DARLING.

1827.
27 Oct.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 110. per ship Elisabeth; acknowledged by Sir George Murray, 31st May, 1828.)

My Lord.

Parramatta, 27th October, 1827.

Department
of colonial
secretary.

I have the honor to state to your Lordship, in reference to my Despatches No. 40 and No. 90 of last year, respecting the Establishment of the Colonial Secretary's Office, that, the arrangement therein reported having, after the experience of twelve Months, been found insufficient, I have lately felt it necessary to revise the Establishment of that Office and to make other arrangements, which I hope will answer the purpose intended.

Board
of inquiry
appointed.

The difficulty, I may say impossibility, of procuring respectable competent clerks at a salary of £100 a year has occasioned the Colonial Secretary's Office being inadequately provided. My attention had in consequence been drawn to the subject and to the consequent arrérar of some Branches of the public Business. The prompt dispatch of this being of the first importance, I appointed a Board to examine and report on the state of the Office according to a "minute," of which the enclosed is a copy.

I beg leave further to enclose copies of the Report of the Board, and of two "Minutes" notifying my decision on the Report and the arrangement to be adopted in consequence.

Colonial
secretary
relieved of
certain duties.

I have found it necessary, as will be seen by Enclosure No. 3, to relieve the Colonial Secretary from a great portion of the details, which have hitherto been carried on in that Office, but which ought to have been conducted by the Departments having charge of those branches of the service, to which they immediately belong. Thus all matters relating to the conduct and management of the Convicts have been placed under the principal Superintendent of the Convict Establishments, and the Victualling and supplying those Establishments, the expenses of which are paid from the Military chest, have now devolved on the Deputy Commissary General exclusively. In this way, the duties of each will be carried on within itself, while the Colonial Secretary will still possess a superintending and controlling power over the whole. This must of course lead to augmenting the Establishment of the Office of the principal Superintendent of Convicts, though it will not be necessary in the Commissariat. But a proportionately smaller Establishment in the Colonial Secretary's Office will answer; and it will further have the effect of leaving the Colonial Secretary more at liberty to assist in the general arrangements of the Government, which for some time past he

has been totally unable to attend to; and the burden thrown upon me has consequently been very oppressive. Having fully explained my views in the enclosure No. 3, it would be improper to take up your Lordship's time in this place in enlarging on the matter.

1827.
27 Oct.

I will only add that the scale of Salaries is calculated to correspond with a scheme, which I have communicated to Mr. Hay, for the Establishment of a Civil Service in this Government, and I shall be gratified to find that the proposed measure is approved by Your Lordship.

Scale of salaries proposed.

I have, &c.,

RA. DARLING.

[Enclosures.]

MINUTES numbered 54, 81 and 83, dated 3rd September, 10th and 22nd October, 1827, by Governor Darling.

REPORT on the present Establishment of the Colonial Secretary's Office, 7th September, 1827.

TABLE of Present Arrangement of Correspondence, 3rd September, 1827.

[Copies of these departmental papers will be found in a volume in series II.]

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch marked "Private," per ship Elisabeth.)

My dear Sir,

Parramatta, 27th October, 1827.

1st. I have explained so fully the cause of Mr. Foster's Appointment as Solicitor General, in my "Separate" Letter of the 10th of September, that I should not have troubled you further on the Subject, were it not for the purpose of pointing out the great additional expense, which must be occasioned, I will not say by Mr. Baxter's incapacity, but by his total inexperience as a Lawyer. He is unable to speak, that is, to address the Court or the Jury, and it appears never had a Brief in his life before his arrival here; the Solicitor General must, therefore, be employed to do the business of the Government. As this Officer has no fixed Salary, he must of course be paid for the various matters, in which he is engaged, and which in short embrace the whole range of the Attorney General's extensive duties. I have thought it right to apprise you of this, that you may be aware of the great encrease of expense unavoidable in this branch of the Service. As to Mr. Foster, he is considered

Incapacity of attorney-general.

Expense involved by employment of W. Foster.

1827.
27 Oct.

to be a sound Lawyer. He acquits himself in a very satisfactory manner in Court, and, if I may judge from some Articles which are ascribed to his Pen, he is not without merit as a public Writer.

Embarrassment
caused by
appointment of
J. T. Morrisett
to command at
Norfolk Island.

2nd. You will, I am sure, excuse my adverting to another Appointment from Home, which has occasioned some Embarrassment. I do it with reluctance; but these are matters, however trivial they may appear, which occasion much difficulty in a place like this. I allude to Colonel Morrisett's Appointment as Commandant of Norfolk Island. I have explained, I hope satisfactorily, in my Despatch No. 108, the reason of my not sending him to that Settlement. In short every thing was opposed to it. The present Establishment is on a very circumscribed Scale, and the Expence is inconsiderable. If the Establishment were to be placed on a Scale commensurate with Colonel Morrisett's expectations, who has brought out the Uniform of a Lieutenant Governor (the whole Settlement consisting only of 60 Soldiers and about 150 Convicts), the Expense would necessarily be much encreased. It was an object on this account alone to keep Colonel Morrisett from Norfolk Island; but I suspect his feelings, which led him to prefer a Situation of Command, will prevent his being reconciled to that of Superintendent of Police. You will, I hope, be satisfied that I have made the best Arrangements under the Circumstances of the case. There is still another point of view, in which I must bring Colonel Morrisett's Appointment as Commandant under your consideration. I allude to his Salary and Allowances. These taken together do not amount to less than £860 a Year. The older Officers never fail to contrast their Situation with the Appointments of more recent date, and it is evident in some cases that a due comparison has not been preserved, and this leads to discontent.

Criticism
of salaries
proposed.

3rd. On the other hand, it appears to me that some of the new Salaries are totally inadequate, if not inconsistent, with the Situations. I allude particularly to the Appointment of Surveyor General. It is directed that Major Mitchell, on succeeding to that Appointment, shall receive a Salary of £600 a Year, being only £100 more than he now has as Deputy. It appears to me, from the nature of this Government, that the Appointment of Surveyor General is one of the highest, perhaps second to none but that of Colonial Secretary.

Salary of
T. L. Mitchell.

You will, I am apprehensive, consider the Salaries recommended by the Board, whose Report accompanied my Despatch

No. 48, as unnecessarily large. The Amount is no doubt considerable; but I am not aware, with reference to certain Salaries fixed at Home, that they exceed the proper relative Proportions.

1827.
27 Oct.

You will, I am sure, excuse the freedom with which I have written on the Subject of Colonel Morrisett's Salary and Mr. Baxter's Appointment. I am fully aware of the difficulty you must find in selecting fit and competent Persons for Situations, where Qualifications of a superior Class are required. I need not observe that the want of these, or of the necessary experience to render the Possessors of certain Offices competent to their important duties, must prevent the Government, in such a Colony as this, from maintaining the Position it ought to possess.

Difficulty
in making
appointments.

I remain, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch marked "Private," per ship Elisabeth; acknowledged by Sir George Murray, 31st May, 1828.)

My dear Sir,

Parramatta, 29th October, 1827.

29 Oct.

I have the honor to acquaint you that I have authorized the issue of £100 to the Reverend Mr. Power, Roman Catholic Chaplain, in addition to his salary of £100 for the present year. The state of his finances rendered this indispensable, and it was besides desirable to attach him to the Government, and prevent, if possible, Mr. Therry prejudicing him and rendering him an Instrument of annoyance, as he had proved himself. You will, therefore, I trust agree with me that the sum is insignificant in comparison with the object.

Advance
made to
Rev'd. D. Power.

I have intimated to Mr. Power that I shall be disposed to allow him, after this year, an addition of £50 to his Salary, until the Catholic Chapel is completed, as he informs me he cannot receive that aid from his parishioners, which is necessary to support a respectable appearance, until the chapel is opened. I am, therefore, to request that the issue of the above Sums may be authorized in order to their being regularly carried to account.

Proposed
increase
of salary.

I beg to add that the Reverend Mr. Murphy, who was reported by the Colonial Agent to have been appointed, has not arrived, and I understand from Mr. Power he has no intention of coming out.

Non-arrival of
Rev'd. R.
Murphy.

I remain, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

1827.
30 Oct.

(Despatch marked "Separate," per ship Elisabeth.)

My dear Sir, Parramatta, 30 October, 1827.

Ill-health of
governor.

I have been so unwell for some time past, and so overpowered with the details of the Government, that I have been unable to look with sufficient attention into the several matters, which you had referred to me. When my last letters were despatched, I was confined to my room and unable to attend to any thing, which was not of a pressing nature. I mention this to explain the cause of your letter on the subject of the Establishment of a *Civil Service* not having been finally disposed of before this, though I might add that, after having given it the best consideration in my power, I am not aware that I can suggest anything of importance in addition to the communication, made to you in my letter of the 6th of February last.

Proposed
formation of
civil service.

On referring to that letter, I perceive I entered pretty fully into most of the points, at least so much so as to enable you to judge whether the plan proposed would answer your views with respect to the Establishment of a Civil Service in this Government, similar to that at Ceylon and the Mauritius. I enclose a proposed scale or rather classification of the Civil Officers, as I promised in my former letter, with a view to their receiving land instead of pension, provided their zeal and general conduct entitle them to the favor of the Government.

Land grants
proposed in lieu
of pensions.

It will of course be necessary to fix the quantity of Land, which the respective classes are to receive; and I should propose the following as the scale to be adopted, vizt.

1st Class:—Officers of this Class to receive Four Square miles (2,560 acres) at the expiration of three years' service, and one square mile in addition to the end of each of the four succeeding years, making in the whole *eight* square miles or 5,120 acres.

2nd Class:—To receive Three Square Miles at the expiration of Three years' Service, and one square mile in addition at the expiration of the 5th, 6th and 7th year's service, making six square miles or 3,840 acres.

3rd Class:—To receive two square miles at the expiration of three years' service, and one square mile in addition at the end of the 5th and 7th years, making four square miles or 2,560 acres.

It will now be necessary to define, more accurately than I was enabled to do in my letter of the 6th of February last, what I should propose in respect to the salaries of the writers and the land to be granted to that class of persons, on the principle of pension.

It has suggested itself to me that, instead of making an increase of salary consequent on mere length of service, without reference to the conduct and qualifications of the Individual, that it will be better to divide this Branch of the Civil Establishment into two distinct Classes, and that removal from one to the other should take place only on the promotion of the Individuals, who by their zeal and competency prove themselves deserving of encouragement.

1827.
30 Oct.
Salaries and
land grants
proposed for
writers.

The following is the scale of Salaries, which under this view of the subject I would recommend, vizt.

Writers. 2nd or Junior Class:—1st Year, £200 per ann.;
2nd do., £225; 3rd do., £250. 1st Class:—1st Year, £300;
2nd do., £325; 3rd do., £350.

By this arrangement, a competent and deserving Individual would, in the course of three or four years, be in possession of an income of £300 a year. If, on the other hand, a Gentleman, who had obtained the appointment of Writer, should prove of little use, either from inattention or incapacity, he would, in that case, be properly kept in the Junior Class on a salary of Two hundred and fifty pounds a year.

The advantage of this arrangement will be more evident, when it is remembered that a writer may, by careless habits or not being qualified for business, be totally useless in a public office, while, having come out with very limited means, it would be a hardship to deprive him of his situation.

I shall now proceed to submit an arrangement respecting the *Land* to be granted to *Writers*, which appears to me is preferable to that suggested in my former letter. The alteration, however, is not material, and is in fact in consequence of the proposed measure of giving Land to the *Officers* of the Civil Government. The adoption of the former Scale, that is, of giving writers two square miles after four years' service, to be increased ultimately to four square miles, would place them on the same footing as *Officers* of the third Class. I, therefore, submit that the maximum to writers be three square Miles, or 1,920 acres, which will be the means of preserving a distinction throughout the classes from the higher *Officers* down to the writers inclusive.

The following is the scale proposed for the writers, vizt.

To receive two square miles after four years' service, and one square mile in addition on having completed seven years' service, provided they shall in the mean time have been promoted to the 1st class of writers. This condition is intended to have the effect of preventing incompetent Individuals from continuing in office to the inconvenience of the service merely for the purpose of obtaining additional land; while they will have received, after

1827.
30 Oct.

Gratuity
proposed with
land grant.

four years' service, such a quantity (1,280 acres) as will enable them to commence as Settlers on a comfortable scale.

I still recommend that the Writers should, with their first Grant of two Square Miles, receive a Gratuity from Government of Two hundred pounds to assist them in stocking their farms, as any savings from their Salary, even with every possible economy, would not of itself be sufficient for the purpose. I should have suggested that their land be given them at three periods, one mile only at a time; but, as grazing is the general pursuit, a smaller quantity than two miles is not sufficient for any number of cattle or sheep.

Land grants to
officers after
promotion.

It may be supposed, with reference to the different classes, that some difficulty might arise in determining the Claims of Officers to Land, who, in consequence of promotion, may be removed to a higher Class, before they have completed the period, when they would be entitled to land in their former class.

In order to show how the difficulty may be met without injury to the claims of the Individuals, I will suppose two Cases: First, of an Officer, say of the 3rd Class, being removed by promotion to the 2nd Class at the end of three Years' service, at which period he would receive two square miles for his services in the third Class. Being in possession of Two Miles, he would be entitled to only one mile in addition at the end of three years' service in the 2nd Class. The possession of the two miles, which he had received previously to entering that Class (which an officer, placed at once in it without any previous service, would not enjoy) would, I conceive, be a fair remuneration for his former service, while he would be in possession of the full quantity of Land, to which an officer of the 2nd Class is entitled after three years' service.

The second case is that of an Officer removed to a higher class, previous to his having completed the period which would give him a claim to Land. In this case, I would propose allowing him credit in the Class, to which he had been advanced, for *half* the period of his service in the former Class. Thus, an Officer, removed to the 2nd at the end of two years' service in the 3rd Class, would, at the expiration of two years in the 2nd Class, have a claim for three square miles.

The rule, thus laid down in these two cases, will I think apply to any others, which are likely to occur, and establishing the principle will be both convenient and satisfactory.

It should be clearly understood that any land, given to the Officers previously to these regulations, would be deducted under

the new arrangement; otherwise the persons, now in Office having all received Land, would ultimately possess an undue proportion.

1827.
30 Oct.

Allowance
for previous
land grants.

However, in deducting a proportion according to circumstances of any previous Grant, the Individual would have the advantage of being relieved from the payment of Quit rent, to the amount of such proportion as he might be entitled to for his service.

I have already stated that, in considering the Land to be granted as a reward for services, it should not be subjected to Quit Rent.

Grants to be
free of quit rent.

I would further propose that the parties should not be at liberty to dispose of it in a less period than seven years from the date of their receiving the first Grant, and that they should be bound to stock and improve or cultivate it to a reasonable extent within two years; in failure of which, it would be resumed by the Crown, the party forfeiting all claim to any further indulgence of this Nature. I would also suggest that such Grants should be revoked, in the event of the Individuals conducting themselves in a manner not becoming officers of the Government, and further that the Deeds should not be delivered to them until the expiration of seven years after receiving possession of the Land.

Conditions to be
imposed in
land grants.

I remain, &c.,

RA. DARLING.

P.S.—I beg to refer you to my Dispatch, No. 110, transmitted by this opportunity, respecting a new arrangement of the Colonial Secretary's Office. You will perceive that the scale of Salaries differs materially in the rate of the progressive increase, though not in the amount of the Salaries, from the former. The present scale is regulated so as to correspond with the salaries of the Writers, as proposed above, from the time that Clerks shall have been promoted from the 3rd to the 2nd Class. For example, there are only two Classes of Writers. The 2nd or Junior Class commences at a salary of £200 a year.

Salaries in
office of
colonial
secretary.

There are three classes of Clerks. The third or Junior commences at a salary of £150. When removed to the 2nd Class, they are on the same footing as Writers, and receive £200 a year. According to the regular routine, the Clerks of the 3rd Class would be three years in that Class, so that the writers, who came out by appointment from England, would have an obvious and immediate advantage. I have entered into this explanation to show you that attention has been paid in assimilating the salaries of Clerks with the Writers, after a certain period, which appears necessary, as they will perform indiscriminately the same duties,

Comparison of
salaries of
writers and
clerks.

1827.
30 Oct.

the only difference being that the Writers, having come out by appointment, commence in the first instance with a larger Salary than the Clerks who are supposed to be engaged on the spot.

R.D.

[Enclosure.]

Proposed
classification
of officers in
civil service.

PROPOSED CLASSIFICATION of the Several Officers and Gentlemen, belonging to the Civil Service of the Government of New South Wales, referred to in Lt. General Darling's letter to Mr. Hay, dated the 31st October, 1827.

Salaries.

First Class.

The Members of His Majesty's Executive Council.
The Judges of the Supreme Court.

£

2nd Class.

1,400	His Majesty's Attorney General.
1,400 x	The Surveyor General.
1,200 x	The Collector of the Customs.
1,000	The Treasurer.
1,000	The Sheriff.
800 x	The Principal Surgeon.
800 x	The Auditor of Public Accounts.
800 x	The Civil Engineer.
800	The Clerk of the Council.
800	The Commissioner of the Court of Requests.

3rd Class.

800 x	The Comptroller of the Customs.
800	The Registrar of the Supreme Court.
600	The p'l Superintendent of Police.
550 x	The p'l Superintendent of Convicts.
500 x	The Collector of Internal Revenue.
500	The Deputy Surveyor General.
500 x	The Harbour Master.
450 x	The Assistant Colonial Secretary.
400 x	The Surveying Officer of Customs.
365	The Commissioners for the Division of the Territory.
300 x	The Colonial Surgeons.

4th Class.

200 x	Assistant Colonial Surgeons.
200	Assistant Surveyors.
200 x	Writers.

N.B.—The Salaries marked x have been recommended for confirmation to the Secretary of State, but no answer has yet been received. The Commissioners for the Division of the Territory are included, as the appointment, though not permanent, must necessarily be continued for some years. I have inserted the Sheriff, The Commissioner of the Court of Requests, and the Registrar of the Supreme Court, though I am not satisfied that the Officers of the Courts of Law should be included in this arrangement. If so, to what situations should they extend?

R.D.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

1827.
30 Oct.(Despatch per ship Elisabeth; acknowledged by Sir George Murray,
27th July, 1828.)

Sir,

Parramatta, 30th October, 1827.

I have hitherto been unavoidably prevented from reporting as directed in your letter of the 19th July, 1825, on certain complaints* alleged against the Colonial Government by Mr. John Blaxland, Landholder in the Colony, as set forth in the copies of the Correspondence which accompanied the said letter.

Claims made by
J. Blaxland.

On consideration of the various points brought under notice in the correspondence alluded to, it appeared to me that the most likely means of eliciting the information necessary to the just appreciation of the merits of Mr. Blaxland's claims would be to refer them to a Board with directions to report their opinions on the claims in question after a due investigation of the grounds on which they were founded.

Investigation
by board of
inquiry.

As the Board to whom the claims were accordingly referred (of whom Mr. J. T. Campbell, formerly Secretary to Governor Macquarie, was one of the Members) seem to have been at considerable pains in investigating them, and as the statements which they obtained appeared to warrant in a great degree the opinions they have given on the case, I do myself the honor of herewith transmitting a copy of their report, together with Copies of the Documents which accompanied it.

You will perceive by Mr. Blaxland's letter to the Board, dated 8th August, 1826, No. 20, that he now confines his claims on Government to the three following heads:—

Statement
of claim by
J. Blaxland.

	£
1st. Equivalent for the Sydney Grant*	400
2nd. Loss on 143 Horses, at £20 a head	2,860
3rd. Loss by the alleg'd non-fulfilment of the 2nd Article of his Contract with Govern- ment	3,840

Total .. £7,100

I fully concur in opinion with the Board as to the reasonableness of the first of these claims, and I see no objection to Mr. Blaxland's receiving a suitable Town Allotment either in Sydney or any of the other Townships, in fulfilment of the promise made him by Governor Macquarie, or that he should be paid the sum specified as compensation for the land, which, being required for Government purposes, and in a very eligible situation, was, at Governor Macquarie's request, given up to the Public.

Admission of
claim *re*
land grant.

* Note 133.

1827.
30 Oct.

Claim for loss
of horses.

Mr. Blaxland's claim to Compensation for the loss of Horses, which he had sent across the Nepean River, owing, as he states, to his having been prevented by the Orders of Governor Macquarie from recovering them, seems to rest in a great degree on assumed contingencies and probabilities, on which no definite opinion can be founded. In stating this claim, the physical difficulties of getting back horses which had been allowed to roam at will over a boundless Tract of unenclosed country seems to have been entirely overlooked, as well as other circumstances, which might have rendered it impossible to recover the number of Horses Mr. Blaxland supposes himself to have lost, independently of any restrictive orders from Governor Macquarie. It is indeed by no means established that the full number of Horses for which he claims compensation had ever even been in existence.

Claim for
non-fulfilment
of agreement
re convict
labour.

The last claim for £3,840 is stated by Mr. Blaxland to be the difference of the expense of six free and six Convict Mechanics for eight years, which he estimates he was compelled to incur in consequence of never having received more than one convict mechanic, notwithstanding that by the second Article of his agreement it was stipulated he should be allowed "Useful convicts in the proportion of one to every 100 acres."

I concur in opinion with the Board that Mr. Blaxland has grounds to expect, from the terms of his agreement, such a proportion of Convict Mechanics as would have been reasonable, with due regard to the calls of Government and the wants and claims of other Individuals, for the services of persons of this description; but as there appears to have been no express stipulation, either as to the number or description of Mechanics (useful convicts only are mentioned), to be assigned him, there are no exact means of determining the compensation to which he ought to be considered entitled on this account; and as the reasons for his not obtaining the assistance of Mechanics of which he was in need cannot now be ascertained with any degree of certainty, it is not easy to come to a satisfactory conclusion on the subject.

Qualified
admission of
claims.

On mature consideration of all the circumstances connected with Mr. Blaxland's claims, I am led to the opinion that he is fully entitled to an equivalent for the Allotment at Sydney given up for the site of the Civil Hospital; that he seems further to have sustained some loss, not only by the interdiction for a certain period of crossing the Nepean to search for his Horses, but also in not having received the assistance of convict Mechanics, which he had reason to expect, but it is impossible now to ascertain facts and circumstances, a knowledge of which

appears indispensable towards forming a just estimate of the Compensation which it would be equitable to award for the loss arising from the two causes last alluded to.

1827.
30 Oct.

Should, however, Mr. Blaxland consent to receive four or five square miles of land free of Quit Rent in full satisfaction of all his claims on Government, I should be disposed to recommend a grant being made to him to this extent, being satisfied that it would not exceed the minimum compensation to which, under all circumstances, he appears to be fairly entitled.

Land grant
proposed in
compensation.

Having lately seen Mr. Blaxland on the subject, I requested he would state in writing what he would consider a fair remuneration, if given in land, for the losses he supposes himself to have sustained. I enclose the copy of a letter which I have received from him in consequence, and, considering his claim as unreasonable and inadmissible, I have not attempted any further negotiation on the subject.

Compensation
suggested by
J. Blaxland.

I have, &c.,

RA. DARLING.

P.S.—It appears that Mr. Blaxland has received from Government 8,000 acres of land without purchase and 5,000 by purchase.

Land received
by J. Blaxland.

R.D.

[Enclosure No. 1.]

REPORT ON CLAIMS OF MR. J. BLAXLAND.

Sir, Land Board Office, Sydney, 25th October, 1826.

We have now the honor to acknowledge the receipt of a letter from the Colonial Secretary, conveying a copy of Your Excellency's Minute, No. 87, dated the 19th of April last, together with other Enclosures and communications from the Under Secretary of State for the Colonial Department, therewith transmitted, on the subject of five different grounds of complaint, preferred by Mr. John Blaxland against the local Government under the administration of the late Governor Macquarie, and requiring us, as a Committee of the Board for General Purposes, to investigate the same and report to Your Excellency on the subject for the information of the Right Honorable the Secretary of State.

Report by
board on claims
of J. Blaxland.

Having, therefore, in obedience to Your Excellency's Instructions, proceeded to investigate into the nature of each claim against Government, in the order in which they have been preferred by Mr. Blaxland, we invited that Gentleman to attend the Board, with the view of receiving from him such explanation as he had to offer in support of his various claims. He accordingly attended the Board for that purpose on the 19th of May last; and, after entering into discussion on the subject of his first claim for the loss of stray Horses, which he complains he was

1827.
30 Oct.

Report by
board on claims
of J. Blaxland.

subjected to in consequence of his having been prohibited by the late Governor Macquarie from following his Horses, which had strayed across the Nepean in the year 1814 into the Government Grounds, opposite to his Farm on the other side that River, the Board, in order to place in a clear and concise point of view the lengthened verbal explanations, which Mr. Blaxland had to offer, submitted to him some queries on the subject, to each of which they requested a written answer; and on the 8th of August last he addressed a letter to them in reply, which, together with his answer to the queries, is herewith transmitted in original and marked No. 20.

On resuming, however, the consideration of Mr. Blaxland's statement as to the obstacles thrown in his way by the constables, who were ordered by the local Government to superintend the recovery of his Horses, we observed that, neither in conversation nor in any of his documents, does he even allege that any obstruction had been opposed to their recovery since the commencement of Sir Thomas Brisbane's Administration; and it, therefore, appeared to be necessary that he should be called upon to explain why he had not recovered the remainder of his Horses, during the five years that have nearly elapsed since General Macquarie retired from the Government. Two letters, therefore, were addressed to him on this subject on the 16th of August and 20th of September last, copies of which are herewith transmitted, marked A and B, and his answers to the Board, dated the 28th of August and 28th of September last herewith, also submitted in original, together with the copies of the other documents, marked Nos. 17, 18 and 19 accompanying them, will shew that he ceased using any further exertions to recover his horses after the receipt of Commissioner Bigge's letter, dated 7th February, 1821, marked No. 19. It appears that he considered that Gentleman's Letter as an engagement on the part of the Local Government to recover his Horses for him, on being paid a sum of £3 as a reward to the Constables for each Horse so recovered. Whether the Letter in question, however, can be construed into an obligation on the part of Government to recover Mr. Blaxland's Horses for him can best be explained by Mr. Bigge himself. To the Board, it only appears to have been a conciliatory proposal on the part of that Gentleman for putting an end to Mr. Blaxland's complaints on that subject, without contravening Governor Macquarie's Regulations. We cannot, therefore, view it in the same light as Mr. Blaxland does; for, after all impediments to the recovery of his Horses ceased on the part of Government, we conceive that, on no principle of common justice, could it be expected that he should receive compensation for his loss

of Horses after the period, when it appears quite evident, by his own letters, that his having ceased all further efforts for their recovery has alone been the cause of the increased loss of which he continues to complain.

1827.
30 Oct.

Report by
board on claims
of J. Blaxland.

In the letter, addressed by his brother, Mr. Samuel Blaxland, to Earl Bathurst on the 15th of February, 1822, he then only estimates his total loss in stray Horses at £1,200; and, in his own statement, marked No. 16, of the probable increase of those Horses and of the number got back at different times since that period, he acknowledges having actually recovered 13, and 5 of that number were as late as the months of May and June last. This circumstance, therefore, shows that, with sufficient diligence and exertion, the greater part of his Horses might have been recovered during the last five years; and we conceive that a great proportion of them, if in existence, may even yet be recovered. Impressed therefore as we are with an opinion that the recovery of the greater part was and may still be practicable, we submit that the Complainant can have no just claim on Government for any supposed loss of Horses after the 15th of February, 1822, when all further obstruction to their recovery ceased on the part of Government.

On maturely reflecting, however, on the nature of the various obstacles thrown in his way by the Government Constables, and conceiving from the situation of his Estate on the right bank of the Nepean, exactly opposite to the Government Grounds, that it has been impracticable to prevent his Horses from occasionally straying across the River (fordable at all seasons unless during a Flood), we are of opinion, under all the circumstances of the case and from the description of Constables and watchmen (all of them previously convicts) who were placed in charge of the Government Lands on the left bank of the River, that they have felt interested in opposing the recovery of his horses with the view of disposing of them thereafter, at convenient seasons, for their own benefit; and we, therefore, arrive at the conclusion that Mr. Blaxland has a well founded claim to moderate compensation for the loss of Horses, he may thereby have sustained. But the Board have no positive data before them, upon which they can venture to found any definite opinion as to the amount he may be entitled to.

Mr. Blaxland's 2nd complaint is the loss of an acre of ground, granted to him and to his Heirs as an allotment for building on in one of the most eligible situations in Sydney, and which Mrs. Blaxland, during his absence in England as a witness on the trial of Colonel Johnstone, was induced to give up at the urgent

1827.
30 Oct.

Report by
board on claims
of J. Blaxland.

request of the late Governor Macquarie, in consequence of its being wanted to form part of the Site of the present General Hospital, which he was then preparing to erect.

By Mr. Blaxland's documents, herewith transmitted, Nos. 10, 12 and 13, and which contain the correspondence on that subject between him and Governor Macquarie, it appears that this claim was acknowledged, and that no objections existed on the part of the Governor to his having a suitable allotment of Ground in lieu of it in the Town of Sydney, "provided he came under an engagement to erect a proper Dwelling House thereon, within 18 months from the date of the said Allotment being marked out for him."

By reference, however, to the Copy of the original Grant (dated the 19th day of July, 1809, and marked No. 22), herewith enclosed, it does not appear that Mr. Blaxland was fettered by any engagement to erect Buildings on it within a given period. On due consideration, therefore, we are of opinion that he has a well founded claim to an equivalent for the Acre of ground in question, which was given up for the erection of an important public building; and, as the very eligible situation, in which it was granted him, would undoubtedly have rendered it a valuable acquisition at the present day, we conceive that the sum of £400, which he claims as an equivalent, must be considered as moderate, if it should be determined to give him the value in money.

The 3rd Complaint, preferred by Mr. Blaxland, it will be seen by reference to his own Letter, addressed to the Board on the 8th of August last and marked No. 20, has been finally adjusted by a late arrangement between himself and his brother Mr. Gregory Blaxland.

In that letter and in another on the same subject, bearing date the 21st October, 1826, and marked No. 23, he also acknowledges that his 4th Complaint has been finally settled, an indemnity having been made to him by the late Governor Macquarie in consequence of Instructions to that effect from Earl Bathurst.

Mr. Blaxland states to the Board that the Document, on which he founds his 5th and last claim to a sum of £3,840, has been lost or mislaid. By reference, however, to the 1st Paragraph of the terms, proposed by him and agreed to by Government, and to the Document No. 5, vizt. a letter from the Right Honble. the Earl of Liverpool, addressed to the then Governor of the Colony, as well as by the Documents Nos. 8 and 9, herewith transmitted, containing the correspondence between him and the late Governor Macquarie on this subject, your Excellency will perceive that a proportion of Artificers for the erection of his buildings, etc., must evidently have been promised him by His Majesty's

Ministers, as in Governor Macquarie's reply to his Memorial, marked No. 9, he indirectly admits his claim, and no where else calls it in question. We find upon enquiry also that artificers and mechanics at that period were difficult to procure, and could only be hired at an extravagant rate. The data, however, upon which Mr. Blaxland makes his calculations in his letter to Commissioner Bigge, bearing date the 25th of December, 1820, and marked No. 7, herewith enclosed, we consider as by no means correct. By his own admission, it would appear that he was only promised such a proportion of Mechanics and artificers, as the Local Government could conveniently spare for the erection of his buildings, etc.; but it certainly could never have been intended by Government that he should have had a right to claim the labour of Convict Artificers for an indefinite period. Although we have no doubt that by his agreement with His Majesty's Ministers he had a claim to the Assignment of a moderate proportion of Mechanics and Artificers for the erection of his buildings, we are at the same time decidedly of opinion that a claim to the extent he makes for the difference of Expense between the Labour of six free Mechanics and Six Prisoners, during so long a period as 8 years, is altogether inadmissible. We should presume that the labour of six Convict Artificers for three or four years at furthest for the erection of his Houses ought to have been considered by Mr. Blaxland as a liberal construction of the promise, made to him by His Majesty's Ministers, at a period when the Colony had made so little progress, and when so few artificers could be spared from the Public Works.

Under all the circumstances of his case, therefore, and after maturely weighing the nature of his different claims, our impression is that, if Government should think proper to make to Mr. Blaxland a moderately liberal Grant of Land, free of Quit Rent, he ought to be fully satisfied, and consider it as a full and final indemnity for the different losses he complains of.

We have, &c.,

WILLIAM STEWART. J. T. CAMPBELL.
WILLIAM LITHGOW.

[Sub-enclosures Nos. 1, 2, and 3.]

[These were:—

John Blaxland's terms for settling.

Viscount Castlereagh to Governor King, 13th July, 1805.

Right Hon. W. Windham to Governor Bligh, 31st July, 1806.

Copies of these papers will be found on pages 491, 490, and 760, volume V.]

1827.
30 Oct.

Report by
board on claims
of J. Blaxland.

Enclosures
to report.

1827.
30 Oct.

[Sub-enclosure No. 4.]

MEMORANDUM BY JAMES MEEHAN.

Memorandum
of land grant for
J. Blaxland.

"FROM the Hut at the Cow Pastures, near the Nepean W. 30° S. 344 Chains 50 links, commencing on Western edge of the River. Then N. 30° W. 216 chains, E. 30° S. 222 Chains 40 Links to the Nepean River, which is the Eastern boundary for 6,500 acres* for John Blaxland, Esq., in the District of the Cow-pastures in Camden County, August 2d, 1808."

JAMES MEEHAN, Acting Surveyor General.

[Sub-enclosure No. 6.]

Deed of grant
to J. Blaxland.

DEED OF GRANT† TO JOHN BLAXLAND.

By Colonel Wm. Patterson, Lieut. Governor, Com-
mander, etc., etc.

To John Blaxland, Esq., his Heirs and Assigns for ever, one acre situate on the east side of the Town of Sydney, Bounded on the west side by an intended Street, bearing South 3° E. 171 feet, and the South side by a line East 3° North, 260 feet. On the East side by an intended Street, bearing North 3° West 171 feet, and on the North side by a Line West 3° South 260 feet. Which said acre of Ground is granted to the said J. Blaxland, Esquire, for the purpose of erecting substantial Buildings thereon, and is not to be alienated or disposed of for the term of five years from the date hereof, and paying an annual Quit Rent of Ten pounds for the term of five years, after which period to pay an Annual Quit Rent of 2s. 6d. per Rod.

In witness whereof, this 19th of July, 1809.

WM. PATERSON.

JAMES FINUCANE, Secretary.

Witnessed by W. GAUDRY and THOMAS MOORE.

[Endorsement] Destroyed the 5th Sept., 1825. F.G.

[Sub-enclosures Nos. 5 and 7 to 23.]

Enclosures
to report.

[These were:—

- (5) Under Secretary Peel to J. Blaxland, 9, viii, 11.
- (7) J. Blaxland to J. T. Bigge, 25, xii, 20.
- (8, 10, 11, 13, 15, 17) J. Blaxland to Governor Macquarie, 26, xii, 18; 10, v, 19; 9, viii, 19; 12, viii, 19; 23, viii, 19; 3, vii, 20.
- (9, 12, 14, 18) Governor Macquarie to J. Blaxland, 31, xii, 18; 10, viii, 19; 20, viii, 19; 5, vii, 20.
- (16) Statement of J. Blaxland's horses, 14, xi, 14; —, vi, 26.
- (17, 21, 22, 23) J. Blaxland to Land Board, 8, viii, 26; 28, viii, 26; 28, ix, 26; 21, x, 26.

* Note 134. † Note 133.

(19) J. T. Bigge to J. Blaxland, 7, ii, 21.

(20) Queries of Land Board with J. Blaxland's answers,
19, v, 26.

1827.
30 Oct.
Enclosures
to report.

(A, B) Land Board to J. Blaxland, 16, viii, 26; 20, ix, 26.

Copies of these papers will be found in a volume in series II.]

[Enclosure No. 2.]

MR. JOHN BLAXLAND TO GOVERNOR DARLING.

Sir,

Newington, 19th October, 1827.

I was directed by your Excellency to transmit the Amount of the Claims I had made on the Government for various losses, sustained by me, which I submitted by Your Excellency's Order to the Gentlemen, composing the Land Board in August, 1826. Soon after that time, I was informed the Papers were sent to Your Excellency to be laid before His Majesty's Ministers.

Compensation
in land
proposed by
J. Blaxland.

1st. £400. For a most valuable Grant of Land in the Town of Sydney, where the General Hospital now stands, for which I hope your Excellency will give me an equivalent in Land in Hyde Park.

2nd. £2,860. Loss in 143 Horses, valued only at £20 each, taking land at 5s. per acre, amounts to 11,440 acres.

3rd. £3,840. Loss by the virtual nonfulfilment of the second Article of my contract amounts to 15,360 acres.

My Sheep, cattle and Horses having increased so considerably that I am much in want of land for their support, and as there can be no easier remuneration on the part of the Crown than giving an equivalent in land, I shall be satisfied to take that on the same terms, as I have purchased land from the Government (viz. 5s. per acre), or at what its supposed value may be.

I have, &c.,

JOHN BLAXLAND.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 4. per ship Hoogley; acknowledged by Governor Darling, 26th February, 1828.)

Sir,

Downing Street, 31st October, 1827.

31 Oct.

With reference to my dispatch of the 21st Ultimo, on the subject of the discussions which have arisen between yourself and the Assistant Judge of New South Wales, I am to acquaint you that, since writing that dispatch, I have received your communications of the dates enumerated in the Margin,* with a letter from Mr. Stephen of the 28th of May last with various inclosures.

Despatches
acknowledged.

* *Marginal note.*—Separate, 18 April, '27; Separate, 24 May; Separate, 31 May.

1827.
31 Oct. .

Despatches
reserved for
consideration.

The great variety and importance of the questions, which these communications have brought under my notice, will prevent my conveying to you by the present opportunity any final Instructions upon the various subjects, to which these Dispatches advert. I trust, however, that it will be in my power to signify to you His Majesty's pleasure on those subjects by some early conveyance. Although I have not deemed it necessary to withdraw my dispatch of the 21st of September, you will, in the mean time, understand that the opinions, which I have therein expressed, are subject to such possible qualifications as a review of the whole of the Public correspondence of yourself and the Judge may hereafter suggest.

You will communicate to the Judge for his information, the substance of this part of my present dispatch.

I have, &c.,
W. HUSKISSON.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 5, per ship Hoogley; acknowledged by Governor Darling, 26th February, 1828.)

Sir, Downing Street, 31st October, 1827.

I have received your dispatch No. 44 of the 18th of March, transmitting a Correspondence which has taken place with Mr. Mackaness on the subject of the Allowancees, to which he considers himself entitled, as Sheriff, in addition to his annual Salary, and also on the subject of his duties and the power of the Government to controul him in the execution of them.

With respect to the pecuniary claims advanced by Mr. Mackaness, I apprehend that it was the intention of the late Secretary of State, when the Appointment of a Sheriff took place, that he should receive a *net* annual income of £1,000, and consequently that he should be allowed his proper and reasonable expenses; but, although I am prepared to sanction the payment of such travelling expenses as Mr. Mackaness may appear actually to have incurred, yet I cannot allow any charge to be made on account of entertainments to the Magistrates at Quarter Sessions, which, however moderate in amount, appear to be very objectionable in principle.

The Office and Duties of Provost Marshall having been wholly superseded by the Appointment of a Sheriff, Mr. Mackaness can have no title whatever to receive a separate Allowance for executing such functions; and you will, therefore, take measures immediately for discontinuing the payment to him of an allowance

Despatch
acknowledged.

Allowances
claimed by
J. Mackaness.

Abolition of
office of
provost
marshal.

the insertion of which in the Parliamentary Estimate was purely accidental, and which it was never intended that he should receive.

1827.
31 Oct.

With reference to the more important point, to which the Correspondence with Mr. Mackaness relates, vizt., whether the Sheriff is not bound to superintend the public Gaol, and to prevent abuses and misconduct on the part of the Gaoler, I am of opinion that, although the Regulations of the Gaol and the controul of the person having charge of it are a branch of Authority, which His Majesty in Council has confided to the Chief Justice, in pursuance of the 17th Section of the Statute, 4 Geo. 4, cap. 96, yet that the Sheriff is by no means absolved from all responsibility on this matter, and that it was clearly his duty to have investigated any cause of grievance, which might have been brought to his notice, notwithstanding the power of remedying the evil might not have rested with him; and it more especially appears to have been incumbent upon him in the case in question to have enquired into the circumstances of the alleged misconduct on the part of the Gaoler, inasmuch as he had been appointed by himself and was charged in plain terms with taking a Bribe to shew undue favor to one Prisoner at the expense of oppression to others. I regret, therefore, to observe that the Sheriff, instead of lending to the Government his assistance in ascertaining the existence of those abuses, should not only have interposed objections calculated to screen the Gaoler from the consequences of any misconduct, of which he might have been found on enquiry to have been guilty, but that he should have assumed a style in his Correspondence with you according so little with that respect, which is due towards His Majesty's Representative from all those Officers who may fill employments under the Crown.

Responsibility
of sheriff in
control of gaol.

Neglect of
duty by
J. Mackaness.

Censure passed
on J. Mackaness.

It is plainly of the greatest importance that the duties of the Sheriff with regard to the Gaol should be correctly understood; and, as it may therefore be right to have an authoritative declaration of the Law, you will bring the matter under the immediate consideration of the Chief Justice, suggesting to him the propriety of issuing the necessary Rules of Court upon the subject. But, if the Chief Justice should be of opinion that the Order in Council does not authorize him to promulgate Rules on such a subject, you will, in that event, propose to the Legislative Council the enactment of such a law as may be necessary for distinctly defining the extent and limits of the Sheriff's Authority.

Extent of
sheriff's
authority to
be defined.

I have, &c.,

W. HUSKISSON.

1827.
31 Oct.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Elisabeth.)

My dear Sir,

Parramatta, 31st October, 1827.

Uniform
proposed for
officers of
government.

It has frequently occurred to me to suggest the advantage, which might result from the adoption of a particular dress or uniform for the Officers and Civil Servants of this Government, with a view of distinguishing them and impressing them in some degree with a more correct notion of their situation than many of them appear to entertain. At present, the Members of Council (the Executive, I presume, are alone entitled to it) have a particular Dress which is *embroidered*. I should propose that, in addition to these Gentlemen, the Heads and Deputies of Departments be permitted to wear a Blue Coat, lined with a white or buff coloured silk, being distinguished by a Button with a crown over the initials *G.R.*, and that the Assistants, Writers and Clerks of the Government Establishment should wear a Button with *G.R.* upon it, without any other device or lining to their coat. If these initials should be objectionable, or interfere with other arrangements, which I am not aware of, the letters *N.S.W.* or the word "*Australia*" might be substituted.

The enclosure, which accompanies my private letter of the 30th instant, contains a proposed classification of the Officers and Civil Servants, and may be useful in regulating this matter.

In the event of this suggestion being adopted, I should propose that the Agent be instructed to have a large quantity of Buttons, *large and small*, prepared and sent out, with the prices, with a view to the Individuals being immediately supplied.

I remain, &c.,

RA. DARLING.

GOVERNOR DARLING TO MR. E. BARNARD.

(Despatch per ship Elisabeth.)

Sir,

Parramatta, 31st October, 1827.

Report re
F. Meurant.

I have the honor to acquaint you, in reply to your Letter of the 20th of April last, that Frederick Meurant appears to be living in the District of "Seven Hills," has a Wife and five or Six Children, and is in very needy circumstances.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO VISCOUNT GODERICH.

1827.
1 Nov.

(Despatch No. 111, per ship Elisabeth; acknowledged by right hon. W. Huskisson, 22nd May, 1828.)

My Lord, Parramatta, 1st November, 1827.

In reference to my Dispatch No. 47, reporting the arrangements I had made respecting the Collection of the Internal Revenue, I now do myself the honor to forward for Your Lordship's information a Statement of the Monies, received by that Department, from its establishment on the 1st of May to the end of October, a period of Six Months, amounting to £16,526 9s. 7³/₄d.

Moneys received
by collector
of internal
revenue.

In availing myself of this opportunity of acknowledging Earl Bathurst's Despatch No. 30 of the present Year, which has only recently come to hand, I must express my hope that it will appear to Your Lordship that the gross Amount and number of distinct Heads of Collection fully justify the arrangement, reported in my Despatch above referred to.

The Salary, which I have proposed for the Collector of Internal Revenue, is certainly not more than is proper and necessary with reference to his duties, which, without any desire to magnify them, are extremely troublesome and responsible, that Officer being required to attend all Sales of Government Property, or to the nature of his Office considered in relation to the other Departments of the Government.

Salary of
collector.

I have, &c.,

RA. DARLING.

[Enclosure.]

[A copy of this detailed half-yearly statement of the collection of revenue will be found in a volume in series II.]

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Elisabeth.)

My dear Sir, Parramatta, 1st November, 1827.

It has not been in my power to forward, before the present Opportunity, the Statistical Tables for the Month of July last, required by the Secretary of State's Circular Letter dated the 11th September, 1826; and I regret that my State of health and the various matters, in which I have been engaged, have not permitted of my preparing a Report as required by the above Letter. The fact is that the Machinery of this Government is totally inadequate to the performance of its various and important duties; and such a load of business has consequently devolved on me, which otherwise must have been neglected, that my health has given way, and I now find myself totally unequal to continue the exertions I have hitherto made. My application

Delay in
transmission
of statistical
tables and
report.

1827.
1 Nov.

Governor
unequal to
exertions
required.

has been incessant, and the Labors of the day have very rarely ceased before Midnight, an exertion of mind and Body to which I am no longer equal. I have been repeatedly assured, and I regret being obliged at last to concur in the Opinion, that the only chance of recovering my health is immediately to discontinue the close application, which I have hitherto given to business.

Condition of
administration.

I need not repeat that this is a Government of no ordinary Character. When I took charge of it, every thing was to be done. It was a Scene of perfect Anarchy and Confusion, and my exertions to establish regularity and order, tho' not hitherto very successful, have occasioned the Sacrifice of my health. The urgent daily business, the details of the Government are endless. The People, even those in Office, had not been used to restraint; they had acted according to their own fancy, and cannot now easily submit to control.

Necessity for
increased
establishments.

The numerous and comprehensive Reports and Statements, called for by your Office, not only add considerably to the local business, but will render an augmentation in the different Establishments and Offices necessary, and consequently occasion additional expense. I find that all the Offices, that is, those where the general business of the Government is carried on, the Colonial Secretary's, the Convict Department, etc., are very much in arrear and will require both additional means and no inconsiderable period to bring up what has unavoidably lain over.

Inability to
fulfil treasury
instructions.

In forming and completing the public Establishments, I have found it impossible to comply with the Treasury Instructions by reporting every Augmentation and trifling encrease of Salary. When the Establishments are once fixed and the Government is perfectly organised, it will be a matter of no difficulty to comply with what is required. But, until this is the Case, reporting every Alteration, which takes place, would be endless and would interfere with matters of much more real importance. The Business relating to the Land alone, the Applications being very numerous, is extremely burthensome, though nothing can be better organised or regulated; still it requires the immediate Superintendence of the Governor. It would be almost impossible in a new country of this magnitude making such rapid Strides to advancement, to keep pace with it, even if the Establishments were all perfectly organised. What then must be the case, when the Establishments themselves are to be formed, and when the Materials to form them should generally speaking be rejected as useless and unfit. I have thus much more to do than is generally considered to be the duty of the Head of a Government; and I must say it is owing entirely to my habits of

Business that any progress has been made towards the Establishment of System and regularity. Much, however, still remains to be done.

1827.
1 Nov.

I am sure, Sir, you will not mistake me so far as to impute to me a desire to arrogate to myself any undue merit for the little, I have accomplished. No Man can think more humbly than I do of the result of his exertions. In fact, my feeling is one of disappointment that these have not been more successful. But I shall conclude with an observation, not infrequently made, though intended perhaps to have another Application:—That no one can form a correct judgement of this country (I will add without fear of contradiction, or of the difficulties of its Government) who is not on the Spot. My Lord Bathurst, however, appeared to have made a very just estimate of the latter, when, speaking of Colonel Arthur's difficulties in his private Letter to me of June, 1826, his Lordship observed, "You also will not be without your Embarrassments in your Government. I will make no observations in this Letter on the dissensions, you will have found at your arrival," etc.; His Lordship then speaks of "the claims of the Emancipists." But these People have given no trouble, and are of themselves quietly disposed and easily governed. In confirmation of this, I have been induced to refer to a private Letter, which Sir Thomas Brisbane wrote me in August, 1823, at the time of my leaving the Mauritius, in which he says, "Of old, you recollect I was not violent or of a querulous disposition; but here an Angel from Heaven could not get on; and it is not the Convicts, who give me trouble, nor the Emancipated Colonists, who have uniformly behaved well, but it is your Settlers and People, who style themselves Gentlemen, and the Magistrates, who generally do all they can to thwart the Government Regulations and the Government measures. I hope both Judges will be relieved," etc. My experience would lead me to amend this Statement by observing it is the Officers of the Government, who are the most troublesome. One or two Artful Men, however, are sufficient to effect this and render the Multitude discontented.

Exertions of
the governor.

Earl Bathurst
on state of
government.

Sir T. Brisbane's
opinion of
the colony.

I remain, &c.,

RA. DARLING.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 112, per ship Elisabeth; acknowledged by right hon. W. Huskisson, 23rd May, 1828.)

My Lord, Parramatta, 2 November, 1827.

2 Nov.

The local Situation of Campbell Town having rendered it expedient to appoint a Superintendent of Police for that place

1827.
2 Nov.

and to hold the Quarter Sessions and Court of Requests there, I have found it necessary to authorise the purchase of a House adequate to these purposes.

Purchase of
court house at
Campbelltown.

A New substantially built Brick House, in every respect suitable for what is required, has accordingly been purchased for the Sum of £1,100, and an additional Sum of £200 is to be given for making some necessary alterations in the Building, and further for providing accommodation for the Detachment of Mounted Police stationed in that Town, making in the whole about £1,300 Sterling.

I have agreed with the parties that they shall receive payment in land, which renders the arrangement still more desirable.

Superintendent
of police at
Campbelltown.

The Salary of the Superintendent of Police is £300 a year, as recommended by the Executive Council last Year, when the expediency of Making the Appointment was first suggested. I delayed the measure, however, until it became necessary to provide a Court House, and that now purchased will answer the several objects pointed out.

I beg to be honored with Your Lordship's Authority that the Amount may be carried to the Public Account.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch marked "Private and Confidential." per ship Elisabeth.)

My dear Sir,

Parramatta, 2d Novem'r. 1827.

Nomination
of clerk to
the council.

I have stated, in my Despatch No. 91 transmitted by this opportunity, that it is of much importance that the appointment of Clerk of the Council should be left to me; and I now beg to impress on you the necessity of my having the nomination to that Office. You will see, by my private Letter to you of the 1st inst., that a great weight of business rests personally on me, and how essential it is I should possess means of obtaining the assistance necessary to its performance. Independent of this, you will have seen how very desirable it is, that the Clerk of the Council should possess the confidence of the Governor. In the Executive Council, it is in fact indispensable to the proper conduct of the Government.

Removal of
H. G. Douglass
from clerkship.

The Members of the Legislative Council, in the Case of the Stamp duty on Newspapers, not being satisfied with Doctor Douglas's proceedings, I thought it better to remove him from that situation to the Court of Requests, where his propensity to Intrigue would find but little room for indulgence. I certainly had received an unfavorable impression of Doctor Douglas's

Character in England; but I did not suffer myself to be influenced, and kept him in the Council when I might have appointed Mr. Holland. He, poor Man, was however totally unfit for any public employment. I mention this to shew I have acted with every possible moderation towards Doctor Douglas, though he is a Man whom I could never trust. He* is extremely intimate with Doctor Wardell, and I have no doubt has been the Tool, tho' not the Dupe of Mr. Forbes. Judge Stephen, who is a very weak man but not intentionally mischievous, is I am satisfied the Dupe of both. I could furnish more than one instance of this, but I am unwilling to take up your time, and will now return to the Subject of the Clerkship of the Council. For the present, I have made a temporary arrangement in order to enable me to have additional assistance in my Office, as without it I cannot possibly get through the public Business. I shall not be able to make a permanent arrangement, until Colonel Dumaresq is disposed of, who I believe is not very anxious for public Employment. But, having been sent home on the business of the Government, it is necessary he should receive some allowance on account of his Expenses, and, as the most convenient mode of accomplishing this, I have made an arrangement which will permit of a portion of the Clerk's Salary being appropriated to this purpose.

1827.
2 Nov.

Criticism of
H. G. Douglass;

and of
J. Stephen.

Clerk to council.

Arrangement re
H. Dumaresq.

I remain, &c.,

RA. DARLING.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Asia; acknowledged by Governor Darling,
15th March, 1828.)

Sir,

Downing Street, 3rd November, 1827.

3 Nov.

I have the honour to acknowledge the receipt of your letter of the 4th of April last, reporting, with reference to the arrangement which was communicated to you in my private Letter of the 9th of March, 1826, that Mr. Forbes has declined to be paid his Salary, as Chief Justice, in any other way than by a Bill upon the Lords Commissioners of the Treasury, the 5th Clause of the Charter establishing the Supreme Court having stipulated that he should receive his Salary in that manner. Having laid your letter before Mr. Secretary Huskisson, he desires that you will acquaint Mr. Forbes that, as Funds are no longer provided by Parliament to meet this and other expenses of the Civil Establishment, the payment of Mr. Forbes' Salary in the accustomed manner will occasion very considerable

Payment of
salary to
F. Forbes.

* *Marginal note.*—Dr. Douglas is Mr. Stephen's Favorite Physician, and he is on terms of the greatest intimacy in his House.

1827,
3 Nov.

embarrassment; and Mr. Huskisson, therefore, trusts that Mr. Forbes will, under these circumstances, wave his right to the privilege in question.

Compensation
for loss in
exchange.

At the same time, I am directed to observe that nothing is further from the Secretary of State's intention than that the Chief Justice should suffer any pecuniary loss by the proposed arrangement; and it is, therefore, his desire that, in issuing from the Colonial Treasury the amount of Salary, to which Mr. Forbes may be entitled, you will take care to make up to him, by an additional payment, any loss which may accrue to him thereby from the difference in the exchange.

I beg to add that, whenever the Charter of Justice may be renewed, the clause, which specifies the particular mode by which the Salary of the Chief Justice shall be paid, will be altered so as to obviate any future difficulty of a similar nature.

I am, &c.,

R. W. HAY.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 113, per ship Elisabeth.)

My Lord,

Parramatta, 3rd November, 1827.

Census of
population for
year 1825.

I do myself the honor to forward herewith two Books containing the result of the Muster of the Population, taken in the Year 1825. Having understood that the correctness of these Returns was not implicitly to be depended on, I had in consequence made an Arrangement last Year for taking a fresh Muster in some more effectual and certain manner; but circumstances occurred to prevent its being carried into effect. I hope, however, to be enabled to proceed agreeably to my intention, as soon as the Harvest is got in, and to forward to your Lordship the Returns of the Muster early next Year.

I have, &c.,

RA. DARLING.

[Enclosures.]

[Copies of these books are not available.]

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch marked "Private," per ship Elisabeth; acknowledged by under secretary Gower, 24th May, 1828.)

My dear Sir,

Parramatta, 3rd November, 1827.

Augmentation
of veteran
companies.

I have received your Letter of the 13th of November last, informing me of the augmentation of Twenty Men to each of the Veteran Companies. The augmentation of one of these Companies has already arrived, and I understand the second may be soon expected.

I have just now perused the entry of my Letter to you of the 8th of February last, and, as far as relates to the Individuals of these Companies, I have to this moment found no reason to alter my opinion. The Serjeant Major, a man who had served for Years as a Serjeant in the 16th Dragoons, was placed in a situation of trust, from which it became necessary almost immediately to remove him, in consequence of the frauds he had committed. Another Man, who had been a Serjeant for Twenty eight Years, and had been Pay Serjeant for a great proportion of that time, having heretofore borne the best character, was placed as Storekeeper in one of the public Establishments, when he immediately commenced stealing the Stores, and he has in consequence been sent to a Penal Settlement. I, therefore, strongly recommend, from the general inefficiency of the Men who are quite unequal to exertion or bodily fatigue, that the Companies may be disbanded, or the Men be gradually discharged, being allowed to receive their Pensions here and Settle in this Country. In proposing this, I do not consider that they are likely to prove useful to the Colony or to benefit themselves. The habits of old Soldiers, when Spirits are within their reach, forbid any such expectation.

1827.
3 Nov.

Misconduct
of men in
companies.

Proposal
to disband
companies.

As to the mode, proposed in my Letter of February above referred to, of forming the Mounted Police, it now appears to me, from the experience I have had, that this Service will be much better provided for by taking the Men as hitherto from the Corps in Garrison. When these Men misconduct themselves, which has very rarely happened, they are returned to their Corps. In this way, there is no trouble in disposing of them, and their services are not lost, as in the Case of the Veteran Companies, who become a serious burthen on the revenue, most of them having large families who are supplied with rations at the public Expense.

Recruiting for
mounted police.

I am not able at this moment to suggest any arrangement for the disposal of the Veterans. But, if it should be thought proper to entrust the disbandment of the Companies to me, I will endeavour to effect the measure in the best manner that circumstances may permit.

I cannot close my Letter without remarking on the conduct of Captain Robison, which appears to have been calculated to increase the embarrassment his Company has occasioned. I have at length been under the necessity of sending him to Newcastle, in order to relieve myself from the annoyance occasioned by his presence in Sydney. He appears to be influenced by the same unhappy litigious spirit, which characterised a relation of his in India, and caused the publication of a posthumous Order, which

Conduct of
R. Robison.

1827.
3 Nov.

did no honor to his memory. Captain Robison has lately married a daughter of Judge Stephen, and I conclude his object is to settle in the Colony. Being interested in its tranquillity, I could have wished he had determined on any other course.

I remain, &c.,
RA. DARLING.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 6. per ship Asia; acknowledged by Governor Darling, 15th March, 1828.)

4 Nov.

Approval of
dismissal of
J. Piper.

Sir.

Downing Street, 4 November, 1827.

I have the honour to acknowledge the receipt of your dispatches of the dates and numbers mentioned in the margin,* relative to the dismissal of Captain Piper from the situation of Naval Officer, and the arrangements, which you have made in consequence of the defects of the former system, for placing that Department upon a more efficient footing.

As the result of the arrangements, alluded to in Lord Bathurst's Circular letter of the 1st January, 1826, has been to place all Appointments of the nature of those communicated in your dispatches in the hands of the Lords Commissioners of the Treasury, I am unable to convey to you any decision on the subject, until I am acquainted with the view, which their Lordships may entertain of the measures, which you have reported. It will be satisfactory, however, to you to know that I approve of the removal of Captain Piper, and that the effectual steps, which you have taken to secure the Public from any loss by that Officer's defalcation, meet my fullest approbation.

I have, &c.,
W. HUSKISSON.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 114. per ship Elisabeth.)

My Lord,

Parramatta, 4th November, 1827.

Transmission
of acts and
ordinances for
year 1826.

In compliance with Earl Bathurst's Despatch, dated 2d November, 1826, I do myself the honor to transmit to Your Lordship a Volume containing all the Acts and Ordinances, which has been promulgated during the Year 1826.

I have, &c.,
RA. DARLING.

* *Marginal note.*—No. 51, 10 April, '27; Sep., 10 April; Sep., 12 April.

GOVERNOR DARLING TO COMMISSIONERS OF NAVY.

(Despatch per ship Elisabeth.)

1827.
4 Nov.

Gentlemen.

Parramatta, 4th November, 1827.

Reference having been made to me in consequence of some occurrences, during the passage, between Mr. McDowall, the Surgeon Superintendent of the Transport Ship Harmony, and Mr. Middleton, the Master, I appointed a Board to examine into the merits of the case; and I do myself the honor to transmit for your information a Copy of the Reports and Proceedings of the Board.

Dispute
between
surgeon and
master on
ship Harmony.

It appears that the Members have not agreed in opinion, and Colonel Stewart, the Lieut. Governor, has drawn up a report of the view, he has taken of the case, as the two other Members has of their opinion. Without knowing more of the matter than appears by the Proceedings, which will enable you equally to judge of it, I am strongly disposed to concur with Colonel Stewart that, even admitting the Surgeon's Conduct to have been irritating, the proceedings of the Master was most unbecoming and improper; and I have no doubt that due Notice will accordingly be taken of it.

I have, &c.,

RA. DARLING.

[Enclosures.]

[Copies of these papers are not available.]

UNDER SECRETARY HAY TO GOVERNOR DARLING.*

Dear Sir,

Downing Street, 5th November, 1827.

5 Nov.

The Bearer of this Letter, Mr. Arthur Kemmis, who is proceeding as a Settler to New South Wales, has been favorably mentioned by Lord Oxmantown to Mr. Huskisson; at whose desire, I beg to recommend Mr. Kemmis to your protection, with the request that you will afford to him any reasonable facilities in furtherance of his objects, as may not be inconsistent with the Regulations.

Recommend-
ation in favour
of A. Kemmis.

I am, &c.,

R. W. HAY.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 115, per ship Elisabeth.)

My Lord,

Parramatta, 5th November, 1827.

Herewith I have the honor to transmit to Your Lordship a return of all the Military Buildings and Defences in this Colony, as required by the Circular Despatch, dated 7th February, 1826.

Return of
military
buildings.

1827.
5 Nov.

Expenditure
on military
buildings.

The Amount of Colonial Revenue, which has been applied for the last Ten Years in the Construction and repair of these Buildings, cannot now be ascertained, but it must have been very inconsiderable, consisting almost exclusively of the proportion of Salaries to Superintendents and Overseers of Convicts, who have been employed on the Works in question; the other expenses resolve themselves into those for the maintenance of Convicts, Tools and Building Materials sent out from England, which have hitherto been defrayed from His Majesty's Treasury.

I have further the honor to enclose a Statement of the Salaries and Allowances paid out of the Colonial Funds to the Persons, whom it is presumed should, under the New Arrangement, be transferred to the Ordnance Department.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

REPORT ON MILITARY BUILDINGS AND DEFENCES.

Report on
military
buildings
and defences.

DAWES BATTERY. Dawes Battery is situated on a point of Land in the centre of the Bay of Port Jackson, called Dawes's Point, at about One Hundred Yards from the Shore and about Sixty feet above the level of the Sea. The Ordnance are mounted *En barbette*. The Battery is an Half Moon Battery. The extent from Angle to Angle is one hundred and twenty feet, and from the Centre of the Half Moon to the Centre of the Line of the two Angles is Sixty feet. The Buildings attached to this Battery are of the following description. In the centre and rear of the Battery is a guard Room, Twenty Eight feet long and fifteen wide; its height from the Floor to the Ceiling is ten feet; this Building in the Front on the out side is twenty Feet wide and nineteen feet high; on each Corner is erected a small Tower about four feet above the top of the wall; their circumference is about twelve feet. From each side of the Guard Room is a Wall extending twenty eight feet and ten feet high; at each end is erected a small Expence Magazine, thirteen feet high, *ten by ten feet* in breadth on the out side; the inside is *Seven by Seven feet* and nine feet high from the Floor to the Ceiling. At the West end of the Guard Room are the Quarters allotted to Mr. Abner Brown, the Ordnance Storekeeper, consisting of three Rooms. The front Room is *fifteen by ten feet* and *Twelve feet* in height from the Floor to the Ceiling. The Sleeping Room, "which is the middle one," is *Sixteen by Sixteen feet* and *eight feet Six Inches* from the Floor to the Ceiling. The Kitchen is *Sixteen by fourteen feet* and in height the same as the sleeping Room. There is one Window in each Room. The whole requires to be put in good repair.

FORT MACQUARIE. Fort Macquarie is situated on a low point of Land called Bennelong's Point on the East Side of the entrance of Sydney Cove. It is a Square, being *one hundred and thirty feet* each way within its Parapet, and built in Stone. On each Angle is a Traverse elevated about five feet above the level of the Platform of the Battery. On the South Side of the Fort is erected a Tower, having eight sides; in circumference is about *ninety nine* feet. The entrance into the Tower is from the South side over a

Stone Bridge *twenty one* feet long and *twelve feet five inches* wide; this Bridge leads in the Passage already described. The Tower consists of three Rooms. The upper Room is fitted up with Raeks, etc., for an Armory; it will contain about *Eleren Hundred* Stand of Arms, one Hundred *Pairs* of Pistols, and one Hundred Sabres. The height from the Platform to the Top of the Parapet of the Tower is *thirty six feet*, and from the bottom of the Ditch to the top of the Parapet of the Tower is *fifty two feet*. In this Fort are Mounted the following Pieces of Ordnance. On the South Side or entrance into the Fort, *One 24 Pounder Gun* and *one 6 Pounder Gun*. On the East Side *three 24 Pounder Guns*; North Side *three 24 Pounder Guns*; And on the West Side *three 24 Pounder Guns*. On each *Traverse* or Angle is Mounted *one 6 Pounder Gun*. Their Carriages are of Wood with Iron Trucks, all in a serviceable state. The Guns Mounted on the Angles are *En barbette*; the others are in Embrazures.

1827.
5 Nov.

Report on
military
buildings
and defences.

POWDER MAGAZINE. This Building is thirty Eight feet long and fourteen in width. There is a small partition at each end, three feet one Inch long. The Magazine stands East and West. In the centre of the West end outer Wall is a large Ventilator, and in the partition Wall are two small Ventilators, one on each side of the small Door of Communication, which is covered with Sheet Copper. This Magazine will contain about 200 Barrels of Gun Powder.

[A detailed tabulated statement of military buildings was also enclosed. This statement specified the length, breadth, height, condition, and whether built of brick or weatherboard, of the barracks, cook houses, guard rooms, etc., at Sydney, Parramatta, Liverpool, and Windsor. A tabulated return of ordnance was also enclosed. Copies of these will be found in a volume in series VII.]

[Enclosure No. 2.]

[A copy of the statement of salaries and allowances is not available.]

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 7, per ship Asia; acknowledged by Governor Darling, 15th March, 1828.)

Sir,

Downing Street, 6th November, 1827.

6 Nov.

In reference to the General Orders* of the 8th of June, 1826, and the 16th of May, 1827, copies of which have been duly forwarded to the Colony for your information, I have the honour to acquaint you that His Majesty has been pleased (in consideration of the expenses to which Officers, emigrating to New South Wales under the arrangement therein mentioned, are subjected before they can establish themselves on their respective locations) to dispense with that part of the Regulations, contained in the General Order of the 8th June, 1826, which requires an Officer to relinquish to the Crown one third of the value of his Commission, the only stipulation now made to ensure the due appropriation of the Sums, produced by the Sale of

Concessions
to be granted
to military
settlers.

* Note 135.

1827.
6 Nov.

Concessions
to be granted
to military
settlers.

Commissions to the intended purpose, being that "the Agent, to whom the purchase Money is paid, shall retain in his hands one third of the amount in each case to be paid to the Officer, who proposes to emigrate, and who shall have obtained permission to dispose of his Commission, or his half pay, with that view, upon his producing to the Agent a certificate, signed by the Master of the Vessel, that he has engaged his passage on board such Vessel for the purpose of proceeding direct to the Colony."

I beg to enclose a Copy of the General Order, which has been promulgated for the information of those Officers of the Army, who may be disposed to avail themselves of the arrangement in question, by which you will perceive that in all other respects the Regulations remain the same as formerly.

I have, &c.,

W. HUSKISSON.

[Enclosure.]

GENERAL ORDER, No. 456.

General order
re concessions
to military
settlers.

Horse Guards, 24th August, 1827.

HIS MAJESTY being desirous of holding out further encouragement to Officers on Half Pay, to become Settlers in New South Wales and Van Dieman's Land, has been pleased, in reference to the General Orders of the 8th June, 1826, and 16th May, 1827, to command that the following additional inducements shall be promulgated to the Army, for the information of those Officers who may be disposed to avail themselves of the benefit of this arrangement.

All Officers on Half Pay, who purchased and were reduced, whatever may have been the period of their Service, or Officers on Half Pay who did not purchase, but who, after having served Twenty Years, half of which on Full Pay, have been reduced, or have retired to Half Pay on account of Wounds or impaired Health, shall be exempted from that part of the Regulation contained in the General Order of the 8th June, 1826, which requires the Officer to relinquish one-third of the value of his Commission to the Crown, and shall be allowed to receive the full value of such Commission, in the same manner as Officers on Full Pay, who having purchased their Commissions, or having served Twenty Years, are desirous of selling out for the same object.

His Majesty has further been pleased to command that this advantage shall be extended to Officers of all ranks, whether on Full Pay, retired Full Pay, or Half Pay; but that, in the two latter Classes, all Sales shall be subjected to the conditions and restrictions established by the General Order of the 2nd May, 1825, notwithstanding that a large portion of the Officers on Half Pay would be excluded thereby from Sale; and in order that the Government may have full security for the appropriation of the Sums produced by the Sale of Commissions to the intended purpose, it is His Majesty's Command that the Agent, to whom the Purchase Money be paid, shall be instructed to retain in his Hands one-third of the Amount in each case, to be paid to the Officer who proposes to emigrate, and who shall have obtained permission to dispose of his Commission, or his Half Pay, with that view, upon his producing

to the Agent a Certificate, signed by the Master of the Vessel, that he has engaged his passage on board such Vessel for the purpose of proceeding direct to the Colony.

1827.
6 Nov.

By His Majesty's Command,
HENRY TORRENS, Adjutant-General.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Asia; acknowledged by Governor Darling.
15th March, 1828.)

Sir,

Downing Street, 6 Novr., 1827.

I have received and laid before Mr. Secretary Huskisson your letter of the 15th of May last, recommending to the favorable consideration of the Secretary of State an application from Captain Stirling of the Royal Navy for a Grant of 2,560 acres, and requesting, at the same time, to be furnished with Instructions as to the manner, in which you are to deal with similar applications from other Naval Officers, who may have been employed there, it having been customary to give Lands to such Officers on their quitting that Station in acknowledgement of their services.

Instructions re
land grants to
naval officers.

I do myself the honour to acquaint you, in reply, that, 'when-ever, as in the case of Captain Stirling, there is manifested a serious intention on the part of those Naval Officers, after an employment of some duration in that quarter, to employ adequate Capital in the cultivation of Land in the Colony, and when their habits qualify them for the undertaking, the Secretary of State would be disposed to entertain a favorable view of such applications; but in no case would he feel himself at liberty to authorize this indulgence to be shown towards the Officers above alluded to, unless the party, applying for a Grant under such circumstances, is prepared to give the most ample security (which should always be exacted) that, in case of his absence from the Colony, a sufficient Agent will be employed by him in the superintendence of his property, with authority to draw upon him for the funds, which may be necessary to bring it into that state of improvement which the conditions require.

With this understanding, Mr. Huskisson will have no objection to confirm to Captain Stirling the Grant of 2,560 Acres, which you have directed to be reserved in his favour; and to his being permitted to purchase a farther quantity of Land to the extent which is permitted by the Regulations. But Mr. Huskisson desires it to be understood that no farther Grant can be made to Captain Stirling, unless he should come to the determination of permanently establishing himself in the Colony.

Land grant for
J. Stirling.

I have, &c.,
R. W. HAY.

1827.
6 Nov.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 116, per ship Elisabeth; acknowledged by right hon. W. Huskisson. 27th April, 1828.)

My Lord.

Parramatta, 6th November, 1827.

Conditional
pardons for
transportees
from Ireland.

I have the honor to transmit herewith for His Majesty's gracious allowance, agreeably to the 35th Section of the 3d Geo. 4th, Chap. 96, Conditional Pardons* for the five Convicts named in the Margin.*

The peculiar nature of the Cases of these Individuals, and their exemplary Conduct since their arrival in the Colony early in the year 1825, have induced me to recommend them as objects not undeserving the Royal Clemency.

These Men were employed in the Police in Ireland, and were found guilty of Manslaughter at the Maryborough assizes in the year 1824.

The enclosed Copy of a Memorial, which they addressed to the lord lieut. of Ireland, certified and recommended by twenty two Magistrates of Queen's County, and of the Memorial of the Petit Jury, by whom they were tried, bear evidence to their having acted in Compliance with the Orders they had received on the occasion, which led to their Conviction, the legality of which Orders, being given by the Magistrates, they had no reason to doubt.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

Memorial from
Irish police for
remission of
sentence.

THE HUMBLE MEMORIAL of John Kingsmill, George Walpole, John Owens, James Hineks, Robert Harvey, and *Robert Bolton*,† now Prisoners in His Majesty's Gaol of Maryborough, under Sentence of Transportation.

To His Excellency the Marquis Wellesley, Lord Lieutenant and General Governor of Ireland, etc., etc., etc.,

Sheweth,

That Memorialists were tried before Mr. Justice Moore at the last assizes for the Queen's County for the Murder of a Man, named Richard McDaniel, and, having been found guilty of Manslaughter, were sentenced to Transportation; Your Memorialist, John Owen, for Seven Years; Your Memorialists, George Walpole and James Hineks, for fourteen Years; and your other Memorialists for Life.

The unfortunate event, for which they were tried, occurred while Memorialists were acting in the discharge of what they

* *Marginal note.*—John Kingsmill, George Walpole, John Owens, James Hineks, and Robert Harvey.

† *Marginal note.*—Died of the wounds received in the unfortunate affray.

conceived to be a bounden duty, by endeavouring to enforce, under the immediate orders of their Chief Constable, an Order or resolution entered into by a general meeting of the Magistrates of said County at Maryborough on the 11th March, 1822; at which Meeting, Twenty five Magistrates being present, it was resolved that the Public Houses in the district of said County, under the peace preservation Act, should be Closed at Nine O'Clock at Night, and the other parts of the County at ten.

1827.
6 Nov.

Memorial from
Irish police for
remission of
sentence.

That the carrying of such order into effect, which Memorialists were obliged from time to time to do, imposed upon them from its nature an invidious and dangerous Duty.

That Memorialists were first apprised of the illegality of said Order by the learned Judge, before whom they were tried, who, in his Charge to the Jury, told them that, if they believed the Evidence for the prosecution, the Offence amounted to Murder; but that, inasmuch as said Order was illegal, Memorialists could not be found Guilty of a less Offence than Manslaughter.

That your Memorialists are advised and humbly submit that, had said order been legal, the learned Judge would, as in duty bound, have left it in the power of the Jury to return a Verdict of General Acquittal; but that, in consequence of the general illegality of said Order, the Jury under the direction of His Lordship had no alternative but that of finding Memorialists Guilty, either of Murder or Manslaughter, and were precluded altogether from considering whether the Act, imputed to Memorialists, might not constitute either Excusable or Justifiable Homicide.

That the Verdict found by the Jury demonstrates that they did not believe the Evidence on the part of the Prosecution; yet, in consequence of the legal obstacle arising out of the Order of the Magistrates, the Jury were prevented from exercising their Judgement upon any Circumstances in the Evidence, offered on the part of Memorialists, which might have entitled them to a general Acquittal.

That Memorialists cannot but feel that, if said order of the Magistrates had not been made, the unhappy event, which led to the Conviction of Memorialists, would not have happened; and they humbly submit that they ought not in any manner to be prejudiced or held responsible for the illegality of an Order, which they were obliged, by their Oath and the Act of Parliament under which they were appointed, to obey; And, therefore, that their case ought to be considered, as they conceived it was, legal and justifiable.

1827.
6 Nov.

Memorialists, therefore, humbly pray that Your Excellency, taking the foregoing circumstances into your gracious Consideration, may extend such remission or relaxation of their respective Sentences to Memorialists, as to Your Excellency may seem meet.

JOHN KINGSMILL. JOHN OWEN. ROBERT HARVEY.
GEORGE WALPOLE. JAMES HINCKS. ROBERT BOLTON.

Endorsement
of petition by
magistrates.

We, the Undersigned Magistrates of the Queen's County, have read the foregoing Memorial, the truth and force of the statement of which we fully admit; and, feeling most deeply and anxiously the extent to which the Magistracy of said County, who concurred in the order or resolution above referred to, was necessary to and responsible for the Act, which led to the Conviction of the Prisoners, do most humbly but earnestly entreat Your Excellency's Consideration to the view of the Prisoners' case, presented by the above Memorial, not only on their account, but on that of the Magistrates of said Country.

Signed by.

DE VESCI.	MATTHEW CASSAN.
J. STAUNTON ROCHFORD.	RICHARD WARBURTON.
ARTHUR VESSEY.	LAUNCELOT CROASDAILE,
JOHN HAWKESWORTH.	one of the Jury.
JAMES EDMUND SCOTT.	JAMES SMITH.
JAMES HORAN.	ROBERT KENNY.
JAMES WHITE.	THOMAS PIGOTT.
WM. MEAGHER.	RICHARD CROASDAILE.
HANS WHITE.	JOHN BALDWIN.
WM. WELLESLEY DESPARD.	EDWARD DUNN.
CHARLES WHITE.	JOHN TIBEANDO,
JOHN CAPE CHIETWOOD.	Foreman of the Jury.

[Enclosure No. 2.]

Memorial from
jurors at trial
of police in
Ireland.

THE MEMORIAL of the Petit Jurors, by whom John Kingsmill, John Owens, George Walpole, James Hincks, Robert Harvey and Robert Bolton, late Police Men, and now under Sentence of Transportation, were tried at the late Assizes of Maryborough before The Honble. Mr. Justice Moore,

To His Excellency the Lord Lieutenant General and General Governor of Ireland, etc., etc., etc.

Humbly Sheweth,

That, although fully convinced at the Trial of the above Prisoners that there was a most material difference in the

shades of guilt proved against them, yet that, under Your Memorialists' view of the Law laid down to them, they could not in their Verdict discriminate between these shades.

1827.
6 Nov.

Memorial from
jurors at trial
of police in
Ireland.

That, under this impression, some of the Prisoners were necessarily included in the general Verdict, against whom no credible evidence was adduced of their having wilfully engaged in the affray, which, however fatal in its result, was evidently sudden, unpremeditated and instantaneous, and arose from Prisoners' endeavours to discharge a duty imposed upon them by the Magistracy.

That Memorialists, considering the very doubtful light, in which the evidence of the principal Witnesses for the prosecution appeared from their near affinity to the deceased, their vindictive feelings, and their being manifestly tampered with, and made up for the occasion, and also weighing the highly respectable Evidence as to the Character of all, but particularly of Kingsmill, in point of humanity and peaceableness of disposition, did not calculate on a Sentence, which in the case of three of the Prisoners, Kingsmill, Harvey and Bolton, was to the utmost extent of punishment inflicted by a recent Statute.

That, on the Trial, Memorialists' impression respecting the culpability of the Prisoner, Kingsmill, mainly rested on the belief that he had the Command of the Party, and did not use his utmost endeavours to prevent mischief. Whereas it has appeared that he had not the sole authority over the Party, Many of the Police engaged being under the Command of another Serjeant; this added to the hurried manner, in which the Prisoners rushed successively into the Room, where their Comrade Bolton, a slight lad, was found on the Floor, covered with blood and apparently engaged in a mortal struggle with and under the deceased, a Man of great strength and size, which circumstances rendered interference on the part of Kingsmill impossible in a matter of such momentary duration.

That Memorialists are *now* aware that deceased was a very ferocious and quarrelsome Character, and appears to them to have been the first Aggressor, from his violent attack on Kingsmill's person and Arms, which led to the affray, so unhappily terminated in his death.

That Memorialists have good reason to believe that Bolton, from his perilous situation under the deceased, must have had apprehensions for his life; and that, under such impression, he did inflict the mortal bayonet wound, of which all the others present appeared to have been totally ignorant.

1827.
6 Nov.

Memorial from
jurors at trial
of police in
Ireland.

That Memorialists, on the most serious consideration of the foregoing Circumstances, find much matter in extenuation of Prisoners' Guilt, and feel it a matter of conscience and justice to lay the same before the head of His Majesty's Government; and they, therefore, most humbly pray Your Excellency may be pleased to take the case under your gracious consideration, and grant the Prisoners such delay or such mitigation of Sentence as to Your Excellency shall seem fit.

I do hereby Certify that the Original Memorial, of which the above is a True Copy, has been signed by all the Individuals who composed the Jury.

JOHN TIBEANDO,

Foreman of Jury, Magistrate King and Queen's Counties.

GOVERNOR DARLING TO MR. W. HILL.

(Despatch per ship Elisabeth.)

Sir,

Parramatta, 6th November, 1827.

Examination
of colonial
accounts.

I have the honor to acknowledge the receipt of Mr. Brooksbank's communication, dated 31st March, 1825, transmitting for my information a Copy of Mr. Harrison's Letter of the same date, addressed by command of the Lords Commissioners of His Majesty's Treasury to my Predecessor, Sir Thomas Brisbane, on the subject of the examination of the accounts of New South Wales and Van Diemen's Land.

Statement of
revenue and
expenditure,
1821-5.

I did not fail to give the necessary directions for carrying their Lordships' Instructions, as contained in Mr. Harrison's Letter, into effect; and I now forward for their Lordships' information Two Bound Volumes, containing Statements of the Accounts of the receipt and Expenditure of the Revenue of New South Wales from the 1st December, 1821, to the 31st December, 1825, together with a Copy of the Auditor's Report thereon.

I am not aware that it is in my power to furnish any more satisfactory information on the subject of their Accounts, than will be afforded by the above mentioned statements and report.

I take the opportunity of acquainting you that I lost no time in transmitting a Copy of Mr. Harrison's Letter for the information and guidance of the Lieut. Governor of Van Diemen's Land.

I have, &c.,

RA. DARLING.

[Enclosures.]

[Copies of these papers are not available.]

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 8, per ship Asla; acknowledged by Governor Darling,
15th March, 1828.)1827.
7 Nov.

Sir,

Downing Street, 7 November, 1827.

I have received your dispatch, No. 57 of the 23rd April last, reporting that an attempt had been made by the Prisoners at Norfolk Island to surprise the Garrison at that place, and that some of the Parties concerned had escaped to a neighbouring Island.

Despatch re
convict revolt at
Norfolk island.

I rejoice to find that the consequences of this revolt by the Convicts in question had not been more serious than from the terms of your dispatch they appear to have been; and it is my earnest hope that the precautionary measures, which you immediately directed to be adopted, will prevent the repetition of any similar attempts on the part of the Prisoners at this Settlement.

I have, &c.,

W. HUSKISSON.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 9, per ship Asla; acknowledged by Governor Darling,
15th March, 1828.)

Sir,

Downing Street, 7 November, 1827.

I have the honour to acknowledge the receipt of your dispatch, No. 46 of the 5th of April last, transmitting an abstract of Crown Lands disposed of during Sir Thomas Brisbane's Administration, and included in the General Warrants issued by him previously to his retiring from the Government.

Lands granted
by Sir T.
Brisbane.

I approve of the view which, in concurrence with the Council, you have taken of this subject, and have to desire that you will confirm the Grants to the Parties accordingly.

I have, &c.,

W. HUSKISSON.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 11⁶, per ship Elisabeth.)

My Lord,

Parramatta, 7th November, 1827.

I have the honor to transmit for Your Lordship's information the Monthly Returns for June, July, August and September last, of the Troops stationed in this Command.

Returns of
military.

I have, &c.,

RA. DARLING.

[Enclosures.]

[Copies of these returns are not available.]

1827.
8 Nov.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 10, per ship Asia; acknowledged by Governor Darling, 18th March, 1828.)

Sir, Downing Street, 8th November, 1827.

Salary of acting
superintendent
of police.

I have received your dispatch, No. 49 of the 9th of April, reporting the circumstances under which you had issued a special remuneration to the person whom you had appointed to execute the duties of principal Superintendent of Police during the absence, on account of indisposition, of Captain Rossi, whom you had allowed to retain his full Salary. With every disposition to comply with your request that the remuneration granted to the person acting should not in this instance be deducted from the Salary of the principal, I am sorry I do not feel myself justified, under the circumstances of the case, to authorize the Sum, which you have issued to Mr. Hely, to stand as a separate charge; for although the Instructions to which you allude may not have reached the Colony at the time the issue in question took place, yet the principle has been long established that no double expenditure should be incurred for the performance of one and the same duty.

I have, &c.,
W. HUSKISSON.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 11, per ship Asia; acknowledged by Governor Darling, 15th March, 1828.)

Sir, Downing Street, 8th November, 1827.

Salary of
P. Simpson.

I have received your dispatch, No. 53 of the 14th of April last, reporting that, with the advice of your Council, you had authorized Lieutenant Simpson, Commandant of Wellington Valley, to be paid at the rate of £300 a year, the same as other Commandants; and I beg to acquaint you in reply that I see no objection to the arrangement, which you have made with a view to obviate any further difficulty in regard to this case.

I have, &c.,
W. HUSKISSON.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch marked "Separate," per ship Elisabeth.)

My Lord, Parramatta, 8th November, 1827.

Having communicated to Chief Justice Forbes a Copy of the Extract of Earl Bathurst's Despatch to Lieutenant Governor Arthur, dated the 1st November, 1826, No. 50, which was transmitted with his Lordship's Despatch to me, No. 94 of last Year,

I received some time after from Mr. Forbes a Letter, of which the enclosed is a Copy, accompanied by his "Remarks upon the present state of the Transportation Laws, with reference to the right of Property and the remission of Sentence of Convicts in New South Wales."

1827.
8 Nov.

Remarks on
transportation
laws by
F. Forbes.

Being desirous of bringing this subject fully before Your Lordship, I lost no time in referring the Chief Justice's "Remarks" for the Opinion of the Attorney and Solicitor Generals; but I have waited to the last moment for their Report, and am now under the necessity of transmitting these Papers without it.

Submission of
remarks to
attorney and
solicitor
generals.

As the Question is purely one of Law, it would be presumptuous in me to offer an opinion on the subject; but I may be permitted to observe that no doubt is entertained as to the Law, as laid down by Mr. Forbes, in the case of Convicts unconditionally assigned; but Mr. Forbes contends, contrary to the Opinion conveyed in Earl Bathurst's Despatch of the 19th February last, No. 6, and the Opinion of the Attorney and Solicitor Generals herewith enclosed, as well as of the Chief Justice of Van Diemen's Land, and in fact of all other persons, to whom I have spoken or have consulted on the subject, that the Governor has not the power of assigning any Convict conditionally. It is stated in the enclosed "Remarks" that "Any limitation upon the free right of Assignment, conveyed by the Acts of Parliament, any Conditions beyond the necessary Consequences of such Acts, any reference to tribunals not legally authorised, any thing in short not in the Acts themselves is illegal and void."

Opinion of
F. Forbes re
power of
governor to
assign convicts.

The Chief Justice next adverts in his "Remarks" to the practice of granting "Tickets of Leave," which he states to be also illegal. He observes near the conclusion of his "Remarks," after recapitulating the Services, etc., in the Colony necessary to obtaining a Ticket of Leave, that, "as a general proposition, the sentences pronounced by the Courts in England are nominal (that is, are rendered so by a Ticket of Leave), and by an Order of the Governor are reduced to a mitigated Scale of Punishment. It appears, therefore, that the rules and regulations of the local Government, in respect of granting Tickets of Leave, are opposed to the specific provisions and the entire policy of the Statutes for Transportation."

Illegality of
tickets of leave
alleged by
F. Forbes.

Whether granting a Convict a Ticket of Leave is inconsistent or incompatible with the Sentence passed on him in England, must, I apprehend, depend on the Sentence. If the Sentence be simply *Transportation beyond the Seas* for a given period, the Law it would appear is fully carried into effect by the Individual being sent to New South Wales, and kept there for the period prescribed, subject to the control of the Governor,

1827.
8 Nov.

Illegality of
tickets of leave
alleged by
F. Forbes.

Consequences of
interpretation
of law by
F. Forbes.

Instructions
received from
Earl Bathurst.

Bill proposed.

from which a Ticket of Leave does not release him, it being granted only during pleasure; nor is he enabled by it to hold property; nor does it remove him beyond the summary Jurisdiction of the Magistrates, to which he still continues subject, the same as other Convicts not enjoying the temporary or conditional indulgence of a Ticket of Leave. But if "Servitude" for the whole period of the Sentence in addition to Transportation be also enjoined, as stated by the Chief Justice, a Ticket of Leave might perhaps be considered as interfering with the Sentence. It is a point, however, on which I do not feel myself competent to offer an opinion; nor is it necessary I should do so. Your Lordship will perceive, on reference to my "Separate" Letter to Earl Bathurst of the 1st of March last, that the subject of the enclosed "Remarks" was very fully brought under his Lordship's notice; on which occasion I adverted to some of the consequences which might be apprehended, should the Chief Justice's interpretation of the Law be correct. It will be seen that the consequences might be of the most serious nature, should the Governor not have the power of making conditional Assignments, and the Assignees be at the same time at liberty to reassign as they might think proper. The Convicts would in that case be frequently reassigned to very improper Persons, and would no doubt be sold to any one possessing the means of purchasing them; still, this is not perhaps the most serious evil likely to result from it. The Tranquillity of the country would not be so seriously endangered by an Individual purchasing a Man, whose Services he required, as by the connivance of Masters at the absence of their Servants of bad character. All of these would certainly soon be at large, preying and committing depredations on the public. I now beg leave to refer Your Lordship to Earl Bathurst's Despatch, dated 19th February, No. 6, informing me that the Governor of this Colony is competent to assign Convicts conditionally; and I further request your Lordship will be pleased to refer to Earl Bathurst's Despatch of the 18th March, 1825, No. 26, to Sir Thomas Brisbane, directing the discontinuance of granting Pardons, and signifying that the Governor might give Tickets of Leave to Convicts meriting Indulgence. I have adverted to these two communications from your Lordship's predecessor, being immediately in opposition to the Opinion contained in the Chief Justice's "Remarks," and I request I may receive such Instructions as will put the question at rest.

I take the opportunity of observing that I should have had a Bill prepared before this, for giving Magistrates the power of enquiring into the complaints of assigned Servants against their

Masters, as suggested in the Chief Justice's Letter of the 1st August, which accompanied my Despatch of the 3d of that Month, No. 79, and recommended in Enclosure No. 2; but I have been desirous of receiving the Opinion of the Attorney and Solicitor Generals on the Enclosure No. 1, previously to taking any step on the Subject.

1827.
8 Nov.

Bill proposed.

Should the Opinion of the Attorney and Solicitor Generals on the "Remarks" of the Chief Justice not place the subject in a different point of view to that in which it appears to me at present, my intention is to let the question of conditional Assignment rest, until I am honored with your Lordship's Instructions, and to discontinue granting Tickets of Leave, though it is a measure which I am aware will occasion much dissatisfaction. It will be seen that Mr. Forbes has brought the Questions forward for the purpose of being submitted to your Lordship, and not as would appear with a view to any legislative enactment; but I am not aware, even if the local Legislature was competent to pass an Act for the purpose of enabling the Governor to make Conditional Assignments and grant Tickets of Leave, that I should have resorted to that measure; as if the Governor already possesses the necessary Authority for these objects (as I have been informed by your Lordship's Predecessor he does), altho' it would not be judicious to act in immediate opposition to the opinion of the Chief Justice, it would not I apprehend be proper, being unnecessary, to call on the local Legislature to give effect to the provisions of an Act of Parliament, which of itself conveys every necessary authority for the objects required.

Procedure
proposed by
governor.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

Sir,

Sydney, 3d October, 1827.

I should have done myself the honor to acknowledge your letter of the 10th ultimo before; but, as it enclosed an extract from a Despatch of Earl Bathurst upon the subject of remitting the sentences of Prisoners under sentence of transportation, a subject upon which I had it in contemplation to address some remarks for the consideration of His Majesty's Government. I deferred answering your Excellency's Letter, until the close of the term would enable me to fulfil my intention. I now beg leave to enclose for your Excellency's consideration the accompanying remarks upon certain points of the Law for transporting convicts, which appear to me to be of great importance to the Colony, and further to request that your Excellency will take an early opportunity of transmitting them to Lord Goderich.

Remarks on
transportation
laws submitted.

1827.
8 Nov.

Record of
remissions of
sentences.

I have caused the Extract alluded to to be entered upon the Minutes of the Court. I never entertained any other view of the subject than that which is taken in Earl Bathurst's Despatch, the closing paragraph of which however I do not quite apprehend. His Lordship appears to have contemplated the preserving an authentic record of the names of all persons, restored to their civil rights by a remission of their sentences. But I do not perceive how that measure will be either effected or facilitated by depositing His Lordship's Despatch in the Office of the Supreme Court. With deference, I beg to state that I think it must have been contemplated to record the remissions of sentence among the records* of the Supreme Court.

I have, &c.,

FRANCIS FORBES.

[Sub-enclosure.]

Remarks by
F. Forbes re
right of
property in and
remission of
sentence of
convicts.

REMARKS upon the present State of the Transportation Laws with reference to the right of property and the remission of sentence of Convicts in New South Wales.

IN the earlier periods of the Settlement of New South Wales, the supply of Convict labour so far exceeded the demand that questions of property were seldom agitated; of late, since the demand is greater than the supply, the question has been raised, and, as it is of the greatest importance that it should be clearly understood so that a proper remedy may, if necessary, be applied, I have felt it a duty to lay the following remarks before the Governor of the Colony in order that they may be transmitted to His Majesty's Government.

Transportation as a punishment being entirely founded in the Statutes, the manner of carrying it into effect, as well as the consequences attending it, must depend upon the specific provisions of the Legislature.

The 4th Geo. I, Ch. 11, recites the want of servants in the Colonies, and provides that certain Offenders should be liable to transportation; it then goes on to empower the Judges, before whom certain offenders should be convicted, to transfer their Services and contract with certain persons for their transportation; it vests a property in such contractors,† or their assigns, for the entire term of transportation; it provides that His Majesty may dispense with such transportation, "paying to the owner or proprietor such sum of money as shall be adjudged reasonable by any two Justices of the Peace," and that, where such offender shall have been transported and *served his time* according to his sentence, such transportation and service shall have the effect of a pardon to all intents and purposes.

* Note 136. † Note 137.

The above Statute applied in terms only to the Colonies in America. The 19 Geo. 3, Ch. 74 (continued by several *Statutes** to the passing of the present transportation Act, 5 Geo. 4, Ch. 84) extended its provisions to all other places beyond the seas, to which Criminals might be transported. The present Act, 5 Geo. 4, c. 84, leaves the general principles of the Act 4 Geo. I *unrepealed*†; and, as most of the Convicts now in the Colony were transported at a time when the clause, respecting the compensation to be awarded by two Justices of the Peace, was in express operation, it may be a question still whether the right of property, vested under the clause referred to, does not survive the expiration of the Statute, 19 Geo. 3, Ch. 74, as part of the sentence or as incident to the sentence under which the convict himself is still held in bondage. In this view of the case, it would not be lawful to dispense with the Sentence of Transportation of any criminal under the late transportation laws, except upon paying to the Proprietor a reasonable sum of Money as directed by the Act.

1827.
8 Nov.

Remarks by
F. Forbes *re*
right of
property in, and
remission of
sentence of
convicts.

The present Act (5 Geo. 4, Ch. 84, Sect. 8) follows the general principle in respect of property in the services of assigned convicts, laid down in the Act 4 Geo. I, Omitting the provision respecting the payment of a sum of money to the Assignee of such Convict. As a general proposition, therefore, there can be no doubt *that the Assignee* of a person, transported by law to New South Wales, has a legal right of property in the services of such person during the period of his term of transportation, and that he can only be divested of such property by law, or by the act of reassignment to such other person as he may think fit. The law is the only rule in interpreting this right of property; it is peculiar in itself; it is the creature of Acts of Parliament; and the Acts themselves must be strictly followed; where they are silent, there is no law, and the relative situation and duties of the Convict and his owner or Proprietor can only be understood and regulated with reference to the Acts of Parliament, and such plain consequences arising out of them, as are clearly and indisputably implied consequences of the Acts, such for example as protection, food, clothing, etc., on the part of the master, and performance of the labour imposed by the assigned Servant. Any limitations upon the free right of assignment conveyed by the Acts of Parliament, any conditions beyond the necessary consequences of such Acts, any reference to tribunals not legally authorized, any thing in short not in the Acts themselves is illegal and void, unless it can be shewn to be derived

* *Marginal note.*—1 and 2 Geo. 4, Ch. 6.

† *Marginal note.*—See Sect. 29.

1827.
8 Nov.

Remarks by
F. Forbes re
right of
property in and
remission of
sentence of
convicts.

from the local laws of the Colony, such laws not being an encroachment upon or at variance with the Acts of Parliament.

Such in my opinion is the right of property, which the Assignee of a Convict has in his services by law. I shall next enquire how far this right of property may be destroyed by the remission of the Sentence of such Convict.

The 5 Geo. 4, Ch. 84, Sec. 9 Provides that nothing in that Act shall affect His Majesty's Prerogative of Mercy. His Majesty, therefore, by his Royal Pardon granted in the regular way, may remit the term of a transported Convict, and thereby destroy the right of property vested in his Assignee.

It is clear that the Governor of the Colony could not in any manner interfere with Sentences passed upon Criminals in England; it was not even supposed that the power of mitigating such sentences could be delegated by the King; and therefore the Statute, 30th Geo. 3, ch. 47, was passed, by which his Majesty was enabled, by commission under the Great Seal, to authorise the Governors of New South Wales, by "instrument under the Seal of the Government," to remit either absolutely or conditionally the whole or part of the term, for which offenders had been transported from Great Britain, such remissions to be included in the first general Pardon, which shall pass the Great Seal of Great Britain, and in the mean time to have the effect of a sign manual pardon.

The general power of pardoning offences committed in Great Britain, thus conveyed to the Governor of New South Wales, being found inconvenient, it was restrained by the 4 Geo. 4, Ch. 96, Sect. 35, and His Majesty's approval or allowance was made a condition precedent to the benefit of a pardon granted by the Governors. So stands the law at present.

A practice has prevailed in New South Wales of granting what are called *Tickets of Leave*,* which are not "remissions of sentence" within the meaning of any of the Acts; they amount to nothing more than allowing a Prisoner to labor for his own benefit, his person being in all respects subject to the summary jurisdiction of the Magistrates like other Convicts, and his ticket of leave being resumable at the pleasure of the Governor, I am of opinion that these instruments are unlawful for the following reasons.

1. The Governor's authority to mitigate the judgement of one of His Majesty's Courts in Great Britain is entirely derived from

* *Marginal note.*—The law officers say that the Govr. can give a Convict a Ticket of Leave, supposing he has not been assigned over by the Governor to any other Person; but that a Convict, having been so assigned, cannot be removed from his Master without the consent of the Latter for the purpose of enjoying the benefit conferred upon him by a Ticket of Leave.

the 30th Geo. 3, ch. 47; and any extension of mercy, beyond the express authority and not in the manner pointed out by that Act, is void.

2. By the 4 Geo. I, Ch. 11, Sect. 2, service for the entire term of transportation, according to the order of the Court, that is, the order of transportation and servitude, is made a condition precedent to the restitution of Civil rights and obligations. It is of great importance to society that the person, who is to be restored to his *plenam et liberam legem*, should not be exposed to legal objections as a witness, etc.; and it is clear that pardons upon condition are only valid upon the performance of such condition. How far then does not the exemption of a Convict from "serving his time, according to the order of the Court," place him out of the consequences of the quasi pardon directed by the Statute 4 Geo. I?

3. The holder of a Ticket of Leave is not within the benefit of the 5 Geo. 4, Ch. 84, Sect. 26; he does not hold a "remission, either conditional or absolute," within the meaning of any other Act. For, in the first place, a remission must be under the Seal of the Government (30 Geo. 3, Ch. 47, Sec. 1), and in the next persons, whose sentences have been "remitted," are no longer liable to the summary jurisdiction of the Magistrates (4 Geo. 4, Ch. 96, Sect. 19). From hence, it follows that a holder of a Ticket of Leave remains still an *ex lex*, incapable of suing in any Court of Justice, of receiving or transferring any legal right. The inconveniences attending such a state may be easily presumed (See *Bullock vs. Dodd*, 2 Barn. and Ald. 258).

4. A right of property being vested in the Assignee of a transported offender cannot be taken away but by law; any regulation, not derived from law and trenching upon this right, is illegal and void, as in other cases of private property.

5. By the 4 Geo. 4, Ch. 96, Sect. 35, it is directed that all instruments, whereby the Governor of New South Wales shall remit or shorten the term of any transported offender, shall be sent to England for the allowance or disallowance of His Majesty's Government. The reason of this provision was stated by His Majesty's Ministers in the House of Commons to be to afford the Government an opportunity of looking into the previous character of the individual and the circumstances, which caused his transportation; it was intended to prevent that reaction upon the morals of the lower orders in England, which an indiscriminate clemency, exercised in New South Wales without reference to the conduct of the offender in England, was said to have produced. Tickets of Leave are not within the regulations prescribed by the statute above mentioned; they take effect

1827.
8 Nov.

Remarks by
F. Forbes re
right of
property in and
remission of
sentence of
convicts.

1827.
8 Nov.

Remarks by
F. Forbes *re*
right of
property in and
remission of
sentence of
convicts.

immediately, and without reference to His Majesty's Government; they are issued upon a Scale of mere time,* with reference to the conduct of the individual in this Colony only, and without any retrospect to the crimes, which may have caused his transportation. Under given rules, the sentence of Seven Years is reduced to four years of servitude; that of fourteen, to six years; and that for life to eight years. So that, as a general proposition, the sentences pronounced by the Courts in England are nominal, and by an Order of the Governor are reduced to a mitigated scale of punishment. It appears, therefore, that the rules and regulations of the local government, in respect of granting tickets of leave, are opposed to the specific provisions and the entire policy of the Statutes for transportation.

I believe that the system of granting limited indulgences to Prisoners is practically speaking founded in wise principles; but it is opposed to the law, and requires to be legalized; and, in this view, I have felt it a duty to lay my opinions before the government in such a form as to call their attention to the subject, in order that such alterations may be made in the existing laws, as the nature of the case may require.

FRANCIS FORBES, Ch. Justice, N. S. Wales.

Sydney, 3rd October, 1827.

[Enclosure No. 2.]

MESSRS. BAXTER AND FOSTER TO GOVERNOR DARLING.

Sir, Attorney General's Office, 11th October, 1827.

Opinion of
A. M. Baxter and
W. Foster *re*
regulations for
assignment
of convicts.

In reply to the communication we have had the honor to receive from Your Excellency respecting the Government Notice of the 30th of July last,† we beg leave to inform Your Excellency that we are of opinion that the 5th Geo. 4, c. 84, does not preclude the local Government from annexing any conditions, consistent with justice and good policy, to an assignment of the service of Convicts; and we are also of opinion that it is an extremely just and politic condition that a Party, to whom any Convict has been assigned, should be liable to be deprived of the service of such Convict by order of any Bench of Magistrates for the causes specified in the Government Notice above referred to, and consequently that such condition is binding on every Person, who may have accepted or who may hereafter accept the assignment of a Convict Servant, subject to such condition. But, as the New South Wales Act and the Order in Council, founded thereon, only authorize Magistrates to interfere between Convicts and their Masters upon the complaint of their *Masters*, it seems to us that Magistrates will have no power to interfere or take away a Prisoner from a Master, who has improperly

* Note 138. † Note 139.

treated him, unless such Master, when he received an assignment of the service of such Prisoner, received it subject to such condition as aforesaid.

If the assignment were in writing, then such condition ought to have been inserted therein; if the assignment were merely verbal (though it appears to us very questionable whether there can be any valid assignment of the service of a Convict except in writing), then it will suffice, if such Assignee had notice of the Condition and assented to it at the time the Prisoner was handed over to him.

Perhaps under all circumstances an Act of Council to give Magistrates this Jurisdiction might be advisable, as without it, before Magistrates could interfere, proof would be required in every case that a Master, who was complained against, had received the assignment of the Service of the Convict, whom he had improperly treated, subject to such a condition as aforesaid; and in the next place, as this interference would be no part of the duty of the Magistrates in their capacity of Magistrates, but merely given them by the Assigner and Assignee of such Convict, they would not be bound to interfere unless they chose.

We have, &c.,

ALEX. M. BAXTER, Att'y Gen'l.

WILLIAM FOSTER, Sol'r Gen'l.

1827.
8 Nov.

Opinion of
A. M. Baxter and
W. Foster re
regulations for
assignment
of convicts.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 12, per ship Asia; acknowledged by Governor Darling, 15th March, 1828.)

Sir,

Downing Street, 9th Novr., 1827.

9 Nov.

I have received your dispatch, No. 47 of the 7 April, on the subject of the Office of Collector of Internal Revenue, to which it appears that you have appointed Lieutenant Condamine with a Salary of £500 per annum.

Appointment
of collector
of internal
revenue.

The late Secretary of State, in his Instructions of the 4th of April last, pointed out an arrangement for relieving the Surveyor General from the charge of collecting the Revenue derived from the Crown Lands in the Colony, which I cannot but think preferable to that which you have now recommended. It is doubtless unfit that an Officer of the Surveyor General's Department should, whilst he holds such an employment, be the receiver of the Rents and other Monies derived from the Land Revenue, although this practice is not uncommon in England. The knowledge, however, acquired in the Surveyor General's Department, is a very fit preparation for discharging the duties of a Collector; and, provided the person chosen from that Department possesses

Instructions
transmitted.

1827.
9 Nov.

the necessary qualifications in other respects, I should not conceive the selection could fall upon any description of person, so well calculated for the Office in question, as one who has been accustomed to such an employment.

Instructions to
be fulfilled.

Upon this ground, therefore, as likewise upon that of economy, I deem it advisable not to depart from Lord Bathurst's arrangement; and you will accordingly carry into effect the Instructions, which his Lordship communicated to you on that subject in his dispatch above adverted to, and as more fully explained by subsequent directions contained in Mr. Hay's letter of the same date.

I have, &c.,

W. HUSKISSON.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 13, per ship Asia; acknowledged by Governor Darling, 15th March, 1828.)

Sir,

Downing Street, 9th November, 1827.

I have the honour to acknowledge the receipt of your dispatch of the 17 of April last, No. 54, reporting the circumstances, which have rendered it necessary to annul the 11th Article of the Royal Instructions, by which it is directed that no Land should be disposed of by sale, until it has been previously surveyed, and recommending that Lands should be put up and sold by public Auction to the highest bidder in preference to being disposed of by Tender, which is directed by the 35th Article of the same Instructions; and I have the pleasure of acquainting you that His Majesty has been pleased to approve of the alterations, which you have proposed in the mode of disposing of the Crown Lands, the reasons for which appear to be very satisfactory.

I have, &c.,

W. HUSKISSON.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 14, per ship Asia; acknowledged by Governor Darling, 28th March, 1828.)

Sir,

Downing Street, 10 November, 1827.

I have received your dispatch, No. 58 of the 26th of April last, reporting that Captain Dumaresq of the Royal Staff Corps, who has been employed for some time in the double capacity of Civil Engineer and Surveyor of the Roads, has been relieved from the latter duty, which has been intrusted to Lieutenant Wilford with a Salary of 10s. per diem and Forage for two horses. It also appears by your dispatch that three subaltern Officers have been appointed as Assistant Surveyors

10 Nov.

Appointment
of surveyors
of roads.

of Roads, with allowances of 5s. a day each and Forage for two horses, and that, in addition to the above, the parties employed upon the Roads at Newcastle have been placed under the Superintendence of Mr. Campbell with a remuneration at the rate of 10s. a day.

1827.
10 Nov.

Appointment
of surveyors
of roads.

These employments (with the exception of that assigned to Lieutenant Wilford) appear to have been newly established, and I regret, therefore, at the time you recommended these Appointments for confirmation, you did not accompany your dispatch by an explanation of the particular duties attached to them, as compared with the duties of the Overseers, who belong to the several Road Gangs, and who are specially paid for their Superintendence; and it would also have been desirable had you informed me of the grounds, which led to your assigning to Mr. Campbell, as Superintendent over a particular District, a Salary equal to that allowed to Lieutenant Wilford, whose Superintendence as Road Surveyor appears to extend over the whole Colony.

Further
particulars
required.

Notwithstanding these observations, however, I desire not to be considered as disapproving the arrangements, which you have made, and which I have no doubt are very necessary; but, at the same time, I must request to be furnished with the information, I have pointed out, to enable His Majesty's Government to understand thoroughly the details.

Appointments
approved.

I have, &c.,

W. HUSKISSON.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 15, per ship Asia; acknowledged by Governor Darling, 15th March, 1828.)

Sir, Downing Street, 10 November, 1827.

I have the honour to acknowledge the receipt of your dispatch, No. 64 of the 12th May last, transmitting a letter, addressed by Sir John Jamison to the late Secretary of State, accompanied by attested Copies of Depositions and Statements of certain occurrences, which are represented to have taken place at Emu Plains* during the Administration of your Predecessor.

Letter from
Sir J. Jamison
received.

You will take an early opportunity of informing Sir John Jamison that his communication has been received, but that, as I do not see any reason for entertaining a different view of his conduct, with reference to the transactions, alluded to, than that taken by Lord Bathurst, I do not feel at liberty, in compliance with Sir John Jamison's request, to withdraw the dispatch, addressed to you on the 10th of September, 1826, which

Refusal to
modify censure
passed on
Sir J. Jamison.

* Note 76.

1827.
10 Nov.

contained the expression of his Lordship's disapprobation of the part taken by Sir John Jamison, with others, on the occasion to which a reference has been made. I have, &c.,

W. HUSKISSON.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Elisabeth.)

My dear Sir,

Parramatta, 10th November, 1827.

Letters
acknowledged.

I have been favored with your private Letters of the 31st March, 4th, 4th April, 1827.

Men reported
to be killed by
constable.

Your Letter of the 31st of March encloses an Extract from the Journal of a Person employed by the Australian Company, which adverts to the circumstance of a Native having been shot by a Constable, who had previously killed a Man in the execution of his duty. The fact is as stated; but my private Secretary had no further concern in the matter than to point out where the Constable would probably be more secure from the revenge of the Associates of the deceased, than he would have been in Sydney. The subsequent Event appeared to have been accidental, and the Journalist states that, from the incoherence of the Man's manner, it appeared to have taken place in a fit of insanity. As to the removal of the Constable from Sydney in the first instance, I have only to observe it is the usual practice to remove all "Approvers," that is, Men who become King's Evidence as it is termed, and Informers, as in general the animosity of the Friends of the Parties who suffer would prevent their living in any degree of Safety. A Prisoner of this Class, who was not long since sentenced to be sent to a Penal Settlement for three Years, petitioned to be allowed to remain in Jail the whole period, as the fury of the party, against whom he had informed, was such as to leave him no chance of saving his Life, if removed from the immediate protection of the Government. Approvers are occasionally sent even to Van Diemen's Land, and brought here from that Colony. The suggestion of the Private Secretary, and he did nothing more than point out Port Stephens as a Place affording greater Security to the Individual than any other to which he could have been sent, was dictated by humanity; and the accidental circumstance, which subsequently occurred, cannot be attributed to any improper interference on his part. Your first Letter of the 4th April relates to the Instructions sent out for the disposal of Land and desires my opinion on certain points. I have been in communication with the Surveyor General on the subject, but the State of his health is such as to prevent his attending to business

Subsequent
treatment of
informers.

Instructions
re disposal
of land.

at present. No time, however, shall be lost in transmitting all the information which it may be in my power to afford.

1827.
10 Nov.

Your second Letter of the *4th of April* relates to the Appointment of an Officer of the Surveyor General's Department to collect the Land Revenue. I have already written so fully on this subject that I will not take up your time in this place by adding anything to my former Letters:

Appointment
of collector
of internal
revenue.

I will not close my Letter without drawing your attention to the present tranquil State of the Colony. There have been some instances of Cattle Stealing, but Bush ranging appears to have been completely put down. I have no recollection of any such occurrence, since my last Despatches were forwarded early in August.

Tranquillity
of colony.

The Country has suffered from a long continued Drought, which has been very injurious to the Cattle; and the present Crop of Wheat will be comparatively small; but the indications of Rain lead to expectations of a more favorable Season, which I trust will not be disappointed.

Prevalence
of drought.

I remain, &c.,

RA. DARLING.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 16, per ship Asia; acknowledged by Governor Darling, 15th March, 1828.)

Sir,

Downing Street, 11 Novr., 1827.

11 Nov.

I have the honor to acknowledge the receipt of your dispatch, No. 66 of the 15th of May, inclosing a return of the number of Convicts actually victualled and clothed by the Government, and stating that arrangements are in contemplation for effecting a reduction in the Prisoners at some of the Government Establishments, where the numbers are more numerous than you intended.

Despatch
acknowledged.

From the dispatch, which the late Secretary of State addressed to you on the 12th of Septr. last, you will be in possession of the sentiments of His Majesty's Government on this subject; and I have much satisfaction in now observing the determination which you have announced of making still further reductions in the number of Prisoners employed by the Government. It does not appear by any means necessary, nor convenient in point of economy, that such a large number should be kept at the Public expense; whilst, on the other hand, the great benefit, which will be felt by the Settlers in obtaining the services of these people, is an additional reason for appropriating to their use every individual Prisoner, whose labour may not be actually required by the Government.

Approval of
reduction
of convicts
maintained by
government.

I have, &c.,

W. HUSKISSON.

1827.
12 Nov.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.
(Despatch No. 17, per ship Asia; acknowledged by Governor Darling,
15th March, 1828.)

Approval of
plan for watch
houses at
Sydney.

Sir, Downing Street, 12th November, 1827.

I have received your dispatch, No. 67 of the 17th of May, 1827, submitting a plan of a Watch House, on which it is proposed to build such as may be in future required, and proposing (the Town of Sydney having been laid out with a view to Police Arrangements in eight wards) that a Watch House should be immediately constructed in each.

In reply, I have the honour to acquaint you that I approve of the erection of Watch Houses at Sydney, upon the plan which is proposed; but I think it advisable to recommend that one only should be built at a time, in order that, after an experiment has been made as to the suitableness of the Building to the object in view, any improvement, which may be found necessary, may be subsequently made in the construction of the others.

I have, &c.,

W. HUSKISSON.

GOVERNOR DARLING TO VISCOUNT GODERICH.
(Despatch No. 118, per ship Elisabeth; acknowledged by right hon.
W. Huskisson, 26th May, 1828.)

Departure of
last detachment
of 3rd regt.

My Lord, Parramatta, 12th November, 1827.

I have the honor to inform Your Lordship that the remaining part of the Buffs will proceed in the course of the present Month to Calcutta.

The Arrival of two Detachments of the 30th and one of the 47th Regiment, amounting to about Ninety rank and file with four Officers, has enabled me to dispense with the further Services of the Buffs; but I beg to observe that the departure of this Regiment will prevent my sending these Detachments on to India to join their Corps.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO VISCOUNT GODERICH.
(Despatch No. 119, per ship Elisabeth.)

My Lord, Parramatta, 12th November, 1827.

Report on
exploration by
A. Cunningham.

I have the honor to forward herewith a Report, being in the form of a Journal, of an Excursion* made by Mr. Cunningham, the Botanical Collector for the Royal Gardens at Kew, together with a Sketch shewing his route, and description of the Country through which he passed.

Mr. Cunningham not having been able to complete these Documents before the present Moment, when the Elisabeth, by

* Note 140.

which I write, is on the point of Sailing, it is not in my power to enter into the Subject, as I could have wished; but I have been unwilling to delay forwarding the report, as the information it contains may be satisfactory and useful.

1827.
12 Nov.

Having expressed my wish to Mr. Cunningham, who appeared better qualified for the undertaking than any person here, to ascertain the nature and description of the Country between Liverpool Plains and Moreton Bay, he expressed his readiness to proceed on the Expedition, and I immediately gave orders for the necessary Equipment.

Purpose of
expedition.

Mr. Cunningham left this early in April, and proceeded to "Segenhoe," an estate on the Northern Boundary of the District of Hunter's River, and took his departure thence on the 30th of that Month. After an absence of thirteen Weeks, it appears he returned to "Segenhoe" on the 28th of July, having traversed a hitherto unexplored Country of 400 Miles.

Duration of
expedition.

From the communications I have had with Mr. Cunningham, I am enabled to submit to Your Lordship the following Outline of his Expedition and Observations, and which I am led to understand is confirmed by his Report.

The Country, which he explored, lies between the parallels of 28° and 32° South, and extends from Liverpool Plains, which are situated at a distance of about 100 Miles from Newcastle in a N.W. direction, to within about half a degree of the Brisbane.

Description
of country
traversed.

It appears that, from Liverpool Plains, the Country, through which Mr. Cunningham passed, was extremely barren until he reached the parallel of 28° South, where he discovered an extensive range of fine open Forest lands, affording excellent Pasturage. This tract of Country is separated from the rivers Brisbane and Logan, which empty themselves into Moreton Bay, by a range of Mountains; but Mr. Cunningham is of opinion that there are passes, through which a Communication may be opened without difficulty, and in that case the land will prove extremely valuable.

I would observe that Mr. Cunningham appears desirous to render the result of his Expedition confirmatory of a favorite hypothesis, the existence of an Inland Sea.* This opinion has lately become so general from the reports of the Natives, that I propose, as soon as the Season permits, to endeavour to ascertain the fact. But the more immediate and practical advantages, which have resulted from Mr. Cunningham's Expedition, are,

Results
achieved.

1st. The Knowledge, which it has furnished of a very considerable extent of the Interior, which was previously unknown and

* Note 132.

1827.
12 Nov.

2nd. The discovery of a rich and fertile Country, which will be of immediate advantage, when the Settlement at Moreton Bay is thrown open.

Commendation
of services of
A. Cunningham.

I cannot conclude without bearing testimony to Mr. Cunningham's Zeal on all occasions; and I have much pleasure in bringing under Your Lordship's Notice the judgment and enterprise he has evinced in the Conduct of this Expedition. It is due to this Gentleman to observe that it has been performed without any claim on his part, or any expectation having been held out to him of remuneration, for the Services he has rendered.

I have, &c.,

RA. DARLING.

[Enclosure.]

[A copy of this report will be found in a volume in series V.]

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Asia: acknowledged by Governor Darling.
15th March, 1828.)

13 Nov.

Recommend-
ation of
H. Donnison
for land grant.

Dear Sir,

Downing Street, 13 November, 1827.

Mr. Henry Donnison, who has been introduced to Mr. Secretary Huskisson by Mr. Fountain Wilson, the Member for Yorkshire, will have the honour of delivering this letter to you.

Mr. Donnison's views in proceeding to New South Wales are both of a Merehantile and Agricultural nature, and I am given to understand that he takes with him Stock and Capital to the amount of £6,000. I am, therefore, to request that you will make to Mr. Donnison a Grant of Land in proportion to the Capital, which he intends to devote to its cultivation, together with a reserve to the same extent to be assigned to him upon his becoming entitled, under the present Regulations, to this indulgence.

I remain, &c.,

R. W. HAY.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Asia: acknowledged by Governor Darling.
15th March, 1828.)

Sir,

Downing Street, 13th November, 1827.

Report on
Moreton bay
pine.

With referenee to your dispatch of the 14th November last, stating that you had directed some specimens of the Moreton Bay Pine to be forwarded to the Commissioners of His Majesty's Navy, I am directed by Mr. Secretary Huskisson to transmit to you herewith the Copy of a letter, which has been addressed by that Board to the Secretary to the Admiralty, wherein they express their opinion that this Timber is unfit for Naval purposes.

I have, &c.,

R. W. HAY.

[Enclosure.]

COMMISSIONERS OF THE NAVY TO SECRETARY CROKER.

1827.
13 Nov.

Sir, Navy Office, 5th November, 1827.

Report on
Moreton bay
pine.

The two Logs and Spar of the Moreton Bay Pine having arrived on the *Regalia* from New South Wales, we beg to state, for the information of H.R.H. the Lord High Admiral, that, in pursuance of the directions conveyed in Mr. Barrow's letter of the 14th June, they have been inspected by the Officers of Deptford Yard, who represent the Timber as so very inferior as to be totally unfit for His Majesty's Service; and, having examined the specimens ourselves, we have to add that we concur in the Officers' opinion.

We are, &c.,

J. TUCKER. J. M. LEWIS.
H. LEGGE.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Asia; acknowledged by Governor Darling,
15th March, 1828.)

Sir, Downing Street, 14 November, 1827.

14 Nov.

With reference to Lord Goderich's dispatch of the 4th August last, notifying to you the appointment of Mr. Dowling to be a Puisne Judge of New South Wales, I am directed by Mr. Secretary Huskisson to acquaint you that the advance of Salary, issued to that Gentleman previously to his departure from this Country, was for one quarter, and not for six months, as stated in the dispatch to which I have above alluded.

Advance of
salary to
J. Dowling.

I have, &c.,

R. W. HAY.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Per ship Asia.)

MR. HAY presents his compliments to Lieut. General Darling, and begs to transmit to him herewith a printed paper shewing the alteration, which has taken place in the distribution of Business in the Colonial Department.

Distribution
of business
in colonial
department.

Downing Street, 14 November, 1827.

[Enclosure.]

R. W. HAY, Esq.:—Gibraltar; Malta; Ionian Isles; Morocco; Algiers; Tunis; Tripoli; Missions to the interior of Africa; Sierra Leone; River Gambia; Cape of Good Hope; Jamaica; Barbadoes; St. Christopher, Nevis, and Tortola; Antigua and

1827.
14 Nov.

Distribution
of business
in colonial
department.

Montserrat; Dominica; Grenada; St. Lucia; St. Vincent; Tobago; Trinidad; Demerara and Essequibo; Berbice; Honduras; Bahamas; Commis. of Enquiry, Criminal Justice, West Indies; Heligoland.

THE HON. E. G. STANLEY:—Lower Canada; Upper Canada; Nova Scotia; Cape Breton; New Brunswick; Prince Edward's Island; Newfoundland; Bermuda; Mauritius; Ceylon; New South Wales; Van Diemen's Land; East Indies; Commissioners of Enquiry, Mauritius and Ceylon.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 18, per ship Asia; acknowledged by Governor Darling, 15th March, 1828.)

15 Nov.

Approval
of plans for
buildings at
Norfolk Island.

Sir,

Downing Street, 15th November, 1827.

I have the honour to acknowledge the receipt of your dispatch, dated the 1st of May last, submitting the plans and estimates of certain Buildings, which it is proposed to erect at Norfolk Island for the accommodation of the Establishment and Prisoners at that Settlement, the expense of which amounts to about £820 19s. 8d.; and I have to convey to you my authority for directing the construction of the Buildings in question.

I have, &c.,

W. HUSKISSON.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 120, per ship Ephemina; acknowledged by Sir George Murray, 30th August, 1828.)

20 Nov.

Opinion of
attorney and
solicitor
generals re
"remarks" of
F. Forbes.

My Lord,

Government House, 20th November, 1827.

I have now the honor to transmit to Your Lordship, in reference to my despatch of the 8th Ultimo, Marked "Separate," a Copy of the opinion of the Attorney and Solicitor Generals on the "Remarks" of Chief Justice Forbes, transmitted with the above Despatch. Having already expressed my sentiments on the subjects of these "Remarks," I shall not take up Your Lordship's time by continuing the discussion. It may, however, be proper to apprise Your Lordship that, having at a recent interview with the Crown Lawyers entered fully into the question of the legality of granting Tickets of Leave, and they having assured me personally, as well as in the accompanying report, that they entertained no doubt on this point, notwithstanding the opinion conveyed in the "Remarks" of the Chief Justice, I shall not discontinue the issue of Tickets of Leave, as I had proposed doing when I last had the honor of writing to Your Lordship. It is, however, extremely desirable, as the Chief Justice is of a contrary opinion, who probably would have to

Issue of
tickets of leave
to be continued.

decide the matter, should it be disputed, that it should be set at rest by some Competent Authority. The granting of Tickets of Leave has not yet been openly resisted, though it has been threatened, the parties being restrained only from an Apprehension of not receiving any Prisoners in future from the Government. But two instances have occurred of Individuals re-assigning their Servants, which I deemed it prudent not to Notice at the time, not having then received the Opinion of the Crown Lawyers on the subject.

I have, &c.,

RA. DARLING.

[Enclosure.]

MESSRS. BAXTER AND FOSTER TO GOVERNOR DARLING.

Sir,

York Street, 16th November, 1827.

Although the Chief Justice has urged five objections against the legality of Tickets of Leave, the whole substance of these five objections may be comprised in the two following:—

1827.
20 Nov.
Issue of
tickets of leave
to be continued.

1st. That, by granting a Ticket of Leave to a Convict, you prevent him from fulfilling his Sentence of Transportation, and thereby acquiring a restitution to his rights and privileges *ut liber et legalis homo*.

Opinion of
A. M. Baxter and
W. Foster re
legality of
system of
tickets of leave.

2ndly. That the granting a Ticket of Leave to an assigned Convict servant is an unlawful interference by the local Government with the private property of the Master of such Convict.

With respect to the first of these objections, it must be recollected that the Sentence of Transportation itself is merely this, "that the Convict be transported beyond the Seas for a specified period"; the subsequent Order of the Court, as to the transfer of the Convict and his Services, is no more any part of the sentence in this case, than the direction of the Court that a Convict Murderer should be hanged in Chains is a part of the Sentence in that Case; and in *Bullock v. Dodds* (reported in 2 *Barnewell and Alderson*, 258, and referred to by the Chief Justice in his "Remarks"), the objection raised against the Plaintiff was not that he had not been *employed* as a Convict Servant during the whole period of his Transportation, but that he had not remained in New South Wales during the whole of such period; and indeed this is all that is meant by the words "serving his term"; but, even if those words were to be construed literally, a Convict is strictly speaking (and as is admitted by the Chief Justice) in a State of Servitude or Bondage, though he may have obtained a Ticket of Leave, which is nothing more than a species of extended holiday, such as is granted once a Week to all the Government Convicts who behave themselves properly; and, if it be illegal to grant the one, it must also be illegal to grant the other; and indeed, if we allow this objection

1827.
20 Nov.

Opinion of
A. M. Baxter and
W. Foster *re*
legality of
system of
tickets of leave.

to be valid, we must also hold that it is incumbent on a Master to keep his assigned Servant in a State of actual labor during every moment of his Transportation.

As to the second objection, it appears to us that the Chief Justice has mistaken the Ground on which the Governors of New South Wales claim the right to grant Tickets of Leave, and has fancied that they found their claim to this privilege on a species of prerogative; whereas we conceive that they are entitled to it, and claim it, as being the original Assignees of all the Convicts who have been transported to this Colony; and, as having imposed this amongst other conditions, when they made such Assignment, viz. that the Masters should at any time be liable to be deprived of the services of such Convicts by their having Tickets of Leave granted to them by the local Government. If so, the enforcing this condition can be no violation of private property, nor any hardship on the Assignee, who consented to receive the services of the Convict on this condition and paid nothing for them. The Chief Justice, at the commencement of his "Remarks," refers to a compensation clause contained in the 4 Geo. I, c. 11 (which compensation was not, however, even by that Act, to be made by the Crown, as appears to have been imagined by the Chief Justice but by the Convict himself) and affirms that such compensation clause was in force up to the passing of the last transportation Act (5 Geo. 4, c. 84). Now in this respect we think the Chief Justice is mistaken, and that such clause has never been in force, since the passing of the 24th Geo. 3, Sect. 2, c. 56 (which was before any Convicts were transported to this Colony), for that Act and all the subsequent ones contain a Proviso that His Majesty may allow of the return of a Convict before the expiration of the period, for which he was transported, but say nothing about any compensation. And indeed we are inclined to think that it will be found on enquiry that, in fact, no Convicts have been transported to this Colony at the expense of any private Individual, but only at the expense of the Crown; and that all of them have been gratuitously assigned to their Masters by the local Government; so that these Masters do in fact sustain no hardship in being deprived of their Services without receiving any compensation, as they would do, if they themselves had been at the expense of bringing out such Convicts.

In a former letter, which we had the honor to address to Your Excellency, we expressed our opinion that the 5th Geo. 4, c. 84, did not preclude the local Government from annexing any conditions, consistent with justice and good policy, to its Assignment of Convict Servants. It would be impertinent in us at

present to trouble your Excellency at any length with the reasons, which have induced us to form this opinion; but we would just crave leave to observe that there are no words in the Act, which make against the construction, which we have put upon it, and the inconveniences which would result from a contrary construction (even if the words of the Act would bear it) are so very great and so numerous, that we cannot imagine any Court of Justice would for a moment think of so construing it; to mention only one of such inconveniences, if the re-assignment of Convicts could take place without the sanction or intervention of the local Government, an immense number of Convicts might get assembled together in any part of the Colony, even without the knowledge of the local Government, which would in consequence be wholly disabled from making such a disposition of the Military Force, as to provide for the safety of the Colony; but this is only one of a host of objections which would arise, if the Act were to be so construed.

We have to apologize to Your Excellency for not having returned an earlier reply to the enclosed communication, which we had the honor to receive from Your Excellency; but we felt a diffidence in dissenting from the Opinion, contained in the "Remarks" of the Chief Justice, until we had given the subject the most full and serious consideration.

We have, &c.,

ALEX. M. BAXTER, Att. Gen.

WILLIAM FOSTER, Sol'r Gen.

1827.
20 Nov.

Opinion of
A. M. Baxter and
W. Foster re
assignment
of convicts.

UNDER SECRETARY STANLEY TO GOVERNOR DARLING.*

Sir, Downing Street, 24th November, 1827.

24 Nov.

Mr. A. Mosman, who is about to proceed to New South Wales for the purpose of establishing a Merchantile House in that Colony, will have the honor of delivering this letter to you; and, having been recommended by Mr. Richmond to Mr. Huskisson, I am directed to introduce him to your notice and protection.

Recommendation in favour
of A. Mosman.

I am, &c.,

E. G. STANLEY.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 19, per ship Mermaid; acknowledged by Governor Darling, 30th July, 1828.)

Sir, Downing Street, 29th Novr., 1827.

29 Nov.

I have to acknowledge the receipt of your dispatch, No. 65, dated the 13th of May last, transmitting extracts from the Minutes of Proceedings of the Executive Council in the cases

Despatch
acknowledged.

1827.
29 Nov.

Approval of
commutation of
death sentences.

of William Puckeridge and Edward Holmes, and of Samuel Chipp and Thomas Stanley, who were convicted of Murder, but who have been respited until His Majesty's Pleasure should be known.

In consequence of the circumstances mentioned in your dispatch, it has been deemed advisable to recommend to His Majesty that the Punishment, which had been awarded to these four Convicts, should be commuted in the manner following, vizt. that of the two first to transportation to Moreton Bay and hard labour in chains for the period of seven years, and that of the two last to transportation to Norfolk Island and hard labour in chains for the period of their natural lives.

Evidence at
trials to be
transmitted.

In transmitting to you, however, herewith His Majesty's Gracious Pardon in favour of these men, I have at the same time to desire that no application of this nature may in future be sent home without an accompanying Report of the whole of the Evidence given at the Trial. In the case of Chipp and Stanley, more especially, your dispatch is not so satisfactory as I could have wished it to have been, since you appear to have determined at one time that the Sentence of the Law should be executed, but you have not informed me of the nature of the delays which interposed to prevent its execution.

I have, &c.,

W. HUSKISSON.

UNDER SECRETARY STANLEY TO GOVERNOR DARLING.

(Received per E. M. Clay on 6th January, 1829.)

Sir,

Downing Street, 29 November, 1827.

Land grant for
E. M. Clay.

I am directed by Mr. Secretary Huskisson to transmit to you herewith a letter from Captain Clay, R.N., who is desirous that his son at present residing at New South Wales should receive and hold a Grant of Land in that Colony as his Agent; and I am to acquaint you that Mr. Huskisson, seeing no objection to this arrangement, desires that you will make to Captain Clay a Grant of Land in proportion to his Capital, with which he entrusts his Son, provided you shall be of opinion that his circumstances are such as to enable him to superintend his Father's Grant as well as his own.

I am, &c.,

E. G. STANLEY.

P.S.—I also transmit to you the copy of a private letter from Sir W. Hope, recommending Captain Clay's application to Mr. Huskisson's favorable consideration.

[Enclosure.]

1827.
29 Nov.

CAPTAIN CLAY TO RIGHT HON. W. HUSKISSON.

25 Upper Gloucester Place, Portman Square,

Sir,

22nd November, 1827.

As I find Government have been graciously pleased to allow to Sir Mich'l Seymour and Captain Hawker of the Navy certain Grants of Land in New South Wales, as an Officer of the same Rank and of upwards of Forty years in His Majesty's Naval Service, in which period I was most severely wounded, whilst serving as fourth Lieutenant on board The Venerable, bearing the Flag of the late Lord Duncan in his memorable Victory off Camperdown, I beg leave respectfully to request you will permit me to be allowed a similar Grant, having a Son a Settler in that Colony, whom I will appoint Agent to superintend it, and will remit him a sufficient Sum to stock and cultivate the same.

I have, &c.,

EDWD. MEY'D CLAY, Captain, Royal Navy.

[A copy of the letter from Sir W. Hope is not available.]

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 20. per ship Mermaid; acknowledged by Governor Darling, 30th July, 1828.)

Sir,

Downing Street, 30th November, 1827.

30 Nov.

I have had the honor to receive your dispatch, No. 68 dated the 19th of May last, transmitting the Copy of a Petition, which had been addressed to you by Mr. D. D. Mathew, complaining of the legal proceedings of the Commissioner of the Courts of Request, together with the Copy of a letter from Mr. Holland in reply to the reference, which you had made to him upon this subject; and I have to acquaint you that the Report, which has reached England of Mr. Holland's unhappy state of mind, renders it unnecessary that I should offer any remarks upon his conduct in this case.

Despatch
acknowledged.Criticism
withheld.

I have, &c.,

W. HUSKISSON.

UNDER SECRETARY STANLEY TO GOVERNOR DARLING.

(Despatch per ship Mermaid; acknowledged by Governor Darling, 30th January, 1829.)

Sir,

Downing Street, 30th November, 1827.

I am directed by Mr. Secretary Huskisson to transmit to you herewith a Copy of a letter from Miss Cotes, enclosing a

1827.
30 Nov.
Application
for land grant.

Memorial from Mr. Cahnac and his Sister, soliciting a Grant of Land at New South Wales, and conveying the request of the Princess Sophia Matilda that the same should be complied with; and I am at the same time to transmit to you a Copy of the reply, which I have addressed to that Lady, whereby you will perceive the nature of the conditions, to which the Secretary of State has deemed it advisable to limit his acquiescence to the request of the Memorialists.

I have, &c.,

E. G. STANLEY.

[Enclosure No. 1.]

MISS COTES TO RIGHT HON. W. HUSKISSON.

Recommend-
ation of petition
by H.R.H.
Princess Sophia
Matilda.

MISS CHARLOTTE COTES presents her Comp'ts to Mr. Huskisson, and has the Princess Sophia Matilda's Commands to trouble him with the enclosed petition, which Her Royal Highness has been entreated to recommend to his Notice; and, observing that it is respectably signed, She ventures to hope that Mr. Huskisson will listen to the request, it contains, should it not be unreasonable.

The Memorialist is the son of a Bookseller, whose two Sisters resided under Her Royal Highness' roof for 25 years, having been successively in the service of the late Miss Lee, who consequently felt interested in the fate of the father, who was transported for a term of 14 years, not long since, being condemned for Selling Stolen Books, but strongly recommended to Mercy by the Jury. His valuable Wife died unfortunately soon after she reached him, which of course greatly encreased his misery, leaving a young son and daughter unprotected. The conduct of John Cahnac, the Convict who has been respectably employed at his desk in New South Wales, has been, Her Royal Highness believes, good.

Rangers House, Blackheath, 20 Nov., 1827.

[Sub-enclosure.]

Memorial of
H. Cahnac
soliciting
grant of land.

THE HUMBLE AND RESPECTFUL MEMORIAL OF HENRY CAHNAC,
To The Right Hon. Earl Bathurst, His Majesty's Principal
Secretary of State for the Colonies, etc., etc., etc.

Sheweth,

That Your Memorialist, with His Mother and Sister, in the month of September, 1826, proceeded from England and embarked on board the Ship "Cumberland," Carns, Master, for the purpose of joining Memorialist's father; and that Memorialist with His Mother and Sister arrived in the above Colony in the month of January following.

That, since the arrival of Your Memorialist in New South Wales, he has been unfortunately deprived of the loss of his mother by death, a circumstance which has tended materially to frustrate the hopes and expectations of your Memorialist, previous to his embarkation from England.

1827.
30 Nov.
Memorial of
H. Cahnac
soliciting
grant of land.

That Memorialist, deploring deeply the loss of his Mother and ever anxious for the welfare of his Father and Sister, is desirous of procuring from Your Lordship the benign indulgence of an Order for a grant of Land in this Colony to Your Memorialists, whereby he may by his industry be enabled to add to the future comfort and support of an aged Father and affectionate Sister.

That, as Memorialist is wholly debarred from receiving the above indulgence from the Authorities of the above Colony, save through your Lordship's kind assent;

Your Memorialist humbly prays that your Lordship, in taking this his respectful Memorial into your beneficent consideration, will be pleased to favor Your Memorialist, in common with other Emigrants to the above Colony, with the indulgence of a grant of Land in New South Wales of such extent, as to Your Lordship's wisdom and generosity may think meet.

And Your Memorialist, as in duty bound, &c.,

HENRY H. T. CAHNAC.

Sydney, N.S.W., 12 June, 1827.

Respectfully recommended to his Lordship's favourable consideration.
W. WEMYSS, Dep. Com. Gen.

[Enclosure No. 2.]

UNDER SECRETARY STANLEY TO MISS COTES.

Madam,

Downing Street, 26 Nov., 1827.

I have had the honor of laying before Mr. Secretary Huskisson your letter of the 20 Inst., enclosing a memorial from Mr. Cahnac and his sister, soliciting a grant of Land at New South Wales, and expressing the desire of The Princess Sophia Matilda that this request might be complied with. I am directed to acquaint you, in reply, that Mr. Huskisson will have much pleasure in forwarding the wishes of her Royal Highness to the Governor of the Colony, with instructions to make to Mr. Cahnac and his Sister a Grant of Land in proportion to their means of cultivating it; but I am at the same time to add that this indulgence can only be granted upon the distinct understanding that the Land in question is to be considered as the sole property of the Memorialists, and not that of the convict Father.

Instructions to
be transmitted
to governor.

I am, &c.,

E. G. STANLEY.

1827.

1 Dec.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship *Ephemia*.)

Sir, Government House, 1st December, 1827.

Despatches
acknowledged.

I have the honor to acknowledge having received from the Right Honble. Lord Goderich the several Despatches, dated as per Margin,* which arrived here in the Convict Ship *John* on the 25th *Ultimo*; and I shall do myself the honor to reply, with as little delay as possible, to such as require to be specially answered.

I have, &c.,

RA. DARLING.

P.S.—You will perceive that *No. 21* has not been received.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship *Ephemia*.)

4 Dec.

Sir, Government House, 4th December, 1827.

Despatches
acknowledged.

I do myself the honor to acknowledge Your several letters as specified in the Margin,† which were received on the 23d *Ultimo* and 3d inst. by the Convict Ships "*John*" and "*Louisa*," and to which I shall have the honor to reply, as early as circumstances will admit.

I have, &c.,

RA. DARLING.

UNDER SECRETARY STANLEY TO GOVERNOR DARLING.

(Despatch per ship *Mermaid*; acknowledged by Governor Darling, 30th July, 1828.)

5 Dec.

Sir, Downing Street, 5th Dec., 1827.

Additional land
to be granted to
W. Walker.

I am directed by Mr. Secretary Huskisson to transmit to you herewith the Copy of a letter from Mr. W. Walker, and, at the same time, to desire that, unless you see any objection to his request, you will make to Mr. Walker an additional Grant of one thousand Acres of Land according to the Regulations now in force in the Colony.

I have, &c.,

E. G. STANLEY.

[Enclosure.]

MR. W. WALKER TO RIGHT HON. W. HUSKISSON.

Sir, No. 53 Old Broad St., 28th November, 1827.

Application
from W.
Walker for
land grant.

With reference to the Conversation, which you did me the honor to hold yesterday, I now beg leave to state that I am deeply interested in the prosperity of the Colony of New South Wales, having a Capital of upwards of £25,000 embarked in

* In the margin, the dates of despatches numbered 7 to 20 and 22 to 33 of 1827 were given, in addition to the "separate" despatch, dated 28th May, 1827.

† *Marginal note*.—Ship "*John*":—11, 11, 22, 30, 30 June, 5, 5, 6, 11, 17, 19 July; Private, 30 June, 7, 13, 14, 17, 17, 18 July. Ship "*Louisa*":—21, 22 August, 1827.

Commercial and Agricultural pursuits there. And, having resolved to enter more largely than I have heretofore done into Grazing Concerns, I have lately imported from Stettin 160 Ewes and Rams of the purest Saxon blood, which I have also chartered a Ship to Convey with myself and six indentured Mechanics and Agricultural Servants to Sydney.

1827.
5 Dec.

Application
from W.
Walker for
land grant.

Viewing such importations as interesting and beneficial alike to the Mother Country, the Colony, and the individual, who embarks his Capital in the undertaking, I venture to hope you will Consider my exertions as entitling me to some further indulgence in the Shape of Land, than is usually given to Settlers who embark less extensively in the undertaking.

The quantity of Land, I have as yet received, is 1,000 aeres from the late Governor Macquarie, and a reserve of 1,000 Acres from His Excellency Sir Thomas Brisbane, until the pleasure of His Majesty's Government should be known. And, tho' I am aware it cannot fairly be stated as an argument in urging my own Claims, I yet may be excused for remarking that the former head of our Firm in Sydney, Mr. Riley,* and my present partner, Mr. Jones (who are each also embarked extensively in Grazing pursuits), have received the indulgence, which I now solicit, to the extent of at least 5,000 Aeres each.

I have only further to add that, having a Ship entirely under my own Control, which will clear at the Custom House on the 15th Prox'o direct for Sydney, I should be happy to Convey any packet which His Majesty's Government may wish to forward at that period for the Colony, and

I have, &c.,

W. WALKER.

UNDER SECRETARY STANLEY TO GOVERNOR DARLING.

(Despatch per ship Mermaid; acknowledged by Governor Darling, 30th July, 1828.)

Sir,

Downing Street, 6 Decr., 1827.

6 Dec.

Mr. Thomas Reed having received permission from the Lord High Admiral to proceed as a Settler to New South Wales under the Provisions of the Admiralty Circular† of the 11th August last, I am directed by Mr. Secretary Huskisson to desire that, in making to Mr. Reed a Grant of Land in proportion to his Capital, he may receive all the advantages to which he may be entitled by the Admiralty Circular in question, Mr. Reed's first Warrant, as a Purser of the Royal Navy, being dated the 5th of November, 1804.

Land grant for
T. Reed as
naval settler.

I have, &c.,

E. G. STANLEY.

* Note 141. † Note 142.

1827.
7 Dec.

UNDER SECRETARY STANLEY TO GOVERNOR DARLING.
(Despatch per ship *Mermaid*; acknowledged by Governor Darling,
30th July, 1828.)

Sir,

Downing Street, 7 Decr., 1827.

Land to be
granted and
sold to
T. P. Macqueen.

I am directed by Mr. Secretary Huskisson to transmit to you herewith the Copy of an application from Mr. Potter Macqueen, respecting two allotments of Land, which he is desirous of possessing, contiguous to the Grant which has already been assigned to him at New South Wales.

I also enclose a Copy of the reply, which has been sent to him, whereby you will perceive the conditions upon which Mr. Huskisson has acceded to his request; and I am to desire that you will take the necessary steps for carrying this arrangement into effect.

I have, &c.,

E. G. STANLEY.

[Enclosure No. 1.]

MR. T. POTTER MACQUEEN TO UNDER SECRETARY HORTON.

Chiehounds Priory, Luton, Beds.,

Dear Sir,

3rd Novr., 1827.

Application
from T. P.
Macqueen
for land.

Before we lose the benefit of your attendance at the Colonial Department, I am anxious to intrude on your kindness, not only from the recollection of the attention which, during the performance of your Official Duties, I have ever received from you, but because your Successor may not be so well acquainted with the nature of the Subject, to which I beg to call your remembrance.

By advices from New South Wales dated last June, I learn that My Agent Mr. McIntyre has been put into possession of the additional 10,000 acres of Land, which had been reserved for me on the *Eastern Side* of Hunter's River. This stream passes thro' some high Hills, which, forming the Eastern Boundary of my property, run to the Northward, until again intersected by the Page River, on the Western Side of which is my *first* location of 10,000 acres. The Angle of land contained between this range of Hills and the eastern side of the Page River is wild and bushy, and of little value to any other person than myself; to me, however, it is of the greatest consequence, as it forms a natural Boundary to my property, and, if occupied by Squatters or located to any one who might be disposed to annoy me, would be extremely inconvenient. I am, therefore, anxious to obtain permission to possess this small tract of inferior Land.

There is another small tract of 2,000 Acres on the Southern Boundary of My Second Location, which I much wish I might be permitted to *purchase*. My principal object in obtaining it is

that it contains a good ford over the river Hunter, a convenience not enjoyed to the Northward; and I have consequently much inconvenience to sustain in passing My Cattle.

1827.
7 Dec.

From the Despatches of Governor Darling, you are probably aware that Assistant Surveyor Dangar has been dismissed from his appointment, in consequence of improper conduct in reference to Land about to be located to Mr. McIntyre, My Agent, and his two Brothers, on the Western Side of Hunter's River, extending to the Eastern bank of Kingdom Ponds. About 1,300 Acres of this land, which has been taken from Mr. Dangar, is situated in the very centre of the Messrs. McIntyre's Grant, and is reserved for the decision of the Secretary of State, and to give it to any other Parties would be to expose them to most *serious* inconvenience. May I, therefore, entreat on their behalf that you will be disposed to take their request into your favorable consideration.

Application
for land for
P. McIntyre.

As the best apology I have to offer for the applications I have ventured to make, permit me now to state that, since I sent out Mr. McIntyre in the Autumn of 1824, I have invested Capital in the Colony to the extent of £23,000 and upwards. And should I succeed in the application I now prefer, I shall, within 12 Months from this time, add £5,000 more. My last returns announce of Live stock above 3,000 Sheep of the purest quality, nearly 500 Horned Cattle of the Durham and Teeswater Breeds, which I introduced into the Colony. I have also imported blood Horses of the highest breed, and am now about to send over 2 Mares of a similar quality; under these circumstances I trust you will not consider that I have neglected the conditions, under which I originally assumed property in this rising Colony; and, requesting you to pardon this long application, I beg to subscribe myself, &c.,

Capital invested
in colony by
T. P. Macqueen.

T. POTTER MACQUEEN.

[Enclosure No. 2.]

UNDER SECRETARY STANLEY TO MR. T. POTTER MACQUEEN.

Sir,

Downing Street, 7 Dec., 1827.

I have to acknowledge the receipt of your letter to Mr. W. Horton of the 3rd November, and, in reply, am directed by Mr. Secretary Huskisson to acquaint you that he has taken into his consideration the request therein made. In consideration of the amount of Capital, which you have already invested in the Colony, and of the additional sum, which you propose to remit thither, Mr. Huskisson is disposed to view your applications in a favorable light. He has, therefore, directed me to inform you that instructions will be sent to Genl. Darling to make to you a Grant of the tract of Land, situated between the range of Hills

Compliance
with requests of
T. P. Macqueen.

1827.
7 Dec.

Compliance
with requests of
T. P. Macqueen.

and the Eastern side of Page's River, subject only to the usual Quit Rent; and the Governor will be further authorized to allow you to purchase the other tract of 2,000 Acres, alluded to in your Letter, south of your second location, which you state to be essential to you on account of its containing a good ford over the River.

With respect to your third application in favor of Mr. McIntyre. I am to inform you that the disposal of the 1,200 acres, which had been assigned to Mr. H. Dangar, has been reserved for Mr. Huskisson's decision, which will be suspended until the arrival of Mr. Dangar himself; should he, however, be ultimately dispossessed of the Land, Mr. Huskisson will not fail to consider the claims of Mr. McIntyre.

I have, &c.,

E. G. STANLEY.

P.S.—I return with many thanks the Maps you were so kind as to send me.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Ephemina.)

10 Dec.

Transmission
of despatches
by governor.

Sir,

Government House, 10th December, 1827.

I have had the honor to receive Your Letter of the 5th July last; in reply to which, I beg to observe that I have no immediate recollection of having entrusted the charge of my Despatches to Lieut. Colonel Balfour and Assistant Surgeon Turner, whom it appears have claimed to be reimbursed the expences, they incurred in conveying them to London.

I have generally resisted applications of this Nature, Considering that my Despatches were much safer, when sent in the usual manner, than if forwarded by private Individuals. I shall, however, be careful to prevent the recurrence of what has taken place.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 121, per ship Ephemina; acknowledged by Sir George Murray, 13th December, 1828.)

11 Dec.

Alteration in
composition of
council.

My Lord,

Government House, 11th December, 1827.

In acknowledging the receipt of the Despatch, addressed to me by Earl Bathurst, dated the 8th of April last, No. 32, transmitting a Warrant under the Royal Sign Manual, by which "the officer next in Command to the Commander of the Forces" is appointed a Member of Council instead of the Lieut. Governor, which appointment is discontinued in consequence of the Orders contained in the said Despatch, I have the honor to apprise Your Lordship that, in preparing to carry His Majesty's Warrant into

effect, an objection presented itself respecting the Appointment of Colonel Lindesay, the Officer next in Command to me, as a Member of the *Executive Council*.

I immediately called on the Attorney and Solicitor Generals, and, having discussed with them the doubts which were entertained, and communicated my Commission and Instructions under the Sign Manual, I considered it advisable to address them officially, that I might receive their opinion in a More formal Manner, than it was given at our interview.

I now do myself the honor to transmit Copies of my Letter and of their reply, by which Your Lordship will perceive that they consider the Governor is not authorized to appoint a Member of the Executive Council, so long as there are two Members on the spot, who are able and willing to act. It consequently follows, the Executive Council, consisting at present of the Chief Justice, the Archdeacon and the Colonial Secretary, that the latter Officer would succeed to the temporary charge of the Government in the event of my Death or Absence, according to what is laid in my Commission as Governor, from which the following is an Extract:—

[*Here followed an extract, commencing "Our Will and Pleasure"; see four lines from foot of page 106, to "dependencies"; see line 14, page 107, volume XII.*]

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

GOVERNOR DARLING TO THE ATTORNEY AND SOLICITOR GENERALS.

Gentlemen, Government House, 8th December, 1827.

I have the honor to transmit to you, in reference to the communication which I made to you personally this morning, the accompanying Extracts from my Commission and Instructions; and I request you will consider and report your Opinion whether, in consequence of the discontinuance of the Office of Lieutenant Governor, as directed in a Dispatch addressed to me by the Lord Viscount Goderich, I have the power of appointing another person to complete the members of the Executive Council to four, the Number originally appointed by His Majesty's Instructions, above referred to.

You will recollect that I communicated to you, at the Interview which took place this morning, a Warrant under the Royal Sign Manual appointing a Council, agreeably to the 24th Section of the 4 Geo. 4, Ch. 96, in which Warrant the Officer next in Command to the Officer commanding the Forces appears as the second Member, the Chief Justice being the first. I advert to

1827.
11 Dec.

Legal difficulties
in appointment
of "officer next
in command"
to executive
council.

Request for
opinion of
attorney and
solicitor
generals.

1827.
11 Dec.

Request for
opinion of
attorney and
solicitor
generals.

this circumstance, as it may be considered, in the absence of more specific Authority, indicative of the intentions of His Majesty's Government as to the Appointment of the Officer next in Command to me, as a Member of the Executive Council, the same as of the Legislative Council.

I request to receive an early Answer, as there are at this moment several important matters to be brought under the consideration of the Executive Council.

I have, &c.,

RA. DARLING.

P.S.—I request you will return the Enclosures with your Answer.

[Sub-enclosures.]

[These were extracts from Governor Darling's commission, which will be found in lines 26-32, page 101, and lines 8-15 and 23-34, page 102, volume VII; and extracts from the instructions which consisted of the paragraph marked "2nd," and the last paragraph on page 108, volume VII.]

[Enclosure No. 2.]

MESSRS. BAXTER AND FOSTER TO GOVERNOR DARLING.

Sir,

York Street, 11th December, 1827.

Legal opinion
re appointment
of new member
of executive
council.

After careful Consideration of the Enclosed Documents, which Your Excellency has done us the honor to submit for our perusal, we do not conceive that such a Vacaney has occurred in the Executive Council, as to require or authorise Your Excellency to appoint a New Member of it; for, although His Majesty has nominated the Persons, holding four specific official Situations for the time being within this Colony, to be of the Executive Council thereof, still it does not appear to have been the intention of His Majesty that such Executive Council should always consist of four, or of any other precise number of Members. Two are sufficient to form, and have the power to act as such Executive Council; and it seems to us that, as long as there are two Persons, holding any of the said four specified official Situations within the Colony, able and willing to act as Members of such Executive Council, that Your Excellency is not required or authorised to appoint any other.

Besides it may be observed that this Vacaney in Council (supposing it could properly be deemed one) has not strictly speaking been caused "by the Death, Resignation, or Departure from the Territory, of any of the said Councillors"; for it must be recollected that Colonel Stewart was not appointed an Executive Councillor by name, but as "The Lieut. Governor for the time being"; consequently, even if he had remained within the

Colony, he would have ceased to be a Member of the Executive Council, as soon as he ceased to be Lieutenant Governor.

1827.
11 Dec.

We have, &c.,

A. M. BAXTER, Attorney General.

WM. FOSTER, Solicitor General.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch marked "Private," per ship Ephemina.)

My dear Sir,

Sydney, 11th December, 1827.

I have written officially by the present opportunity, under this date, respecting the mistake which I apprehend has occurred in not providing for the appointment of Colonel Lindesay, the Officer next in Command, to a Seat in the Executive Council. Having drawn your attention to the Subject, and forwarded the opinion of the Attorney and Solicitor Generals upon it, I shall only add that it is necessary the mistake should be immediately rectified, as, under present circumstances, the Colonial Secretary would succeed to the charge of the Government in the event of my death or absence, which I believe is not the intention of His Majesty's Government.

Error in filling
vacancy in
executive
council.

I remain, &c.,

RA. DARLING.

GOVERNOR DARLING TO MR. E. BARNARD.

(Despatch per ship Ephemina.)

Sir,

12th December, 1827.

12 Dec.

In reply to your Letter of the 4th April last, requesting information on the subject of the property of the late Richard Walker, I do myself the honor to transmit a Certified Copy of his Will, which is registered in the Supreme Court, and a Certificate of his having been married to the person, who has succeeded to his Property.

Will and
marriage
certificate of
R. Walker.

I have, &c.,

RA. DARLING.

[Enclosure.]

[A copy of the certified will is not available.]

UNDER SECRETARY STANLEY TO GOVERNOR DARLING.*

Sir,

Downing Street, 13th December, 1827.

13 Dec.

His Royal Highness The Lord High Admiral having permitted Lieutenant T. C. Dyball, R.N., to proceed as a Settler to New South Wales, I am directed by Mr. Secretary Huskisson to desire that you will make to this Officer a Grant of Land according to the provisions of the Admiralty Circular† of the 11th August last. Lieutenant Dyball entered His Majesty's Naval Service on the 17th April, 1803.

Recommend-
ation of
T. C. Dyball as
naval settler.

I am, &c.,

E. G. STANLEY.

* Note 6. † Note 142.

1827.
14 Dec.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 122, per ship *Ephemia*; acknowledged by Sir George Murray, 30th August, 1828.)

My Lord, Government House, 14 December, 1827.

Disapproval
of conduct of
J. Mackaness.

I have the honor to acknowledge the receipt of Your Lordship's Despatch No. 31 of the present Year, in reference to the Conduct of Mr. Mackaness, the Sheriff, at the public Meeting held at Sydney on the 26th of January last; and I have the honor to transmit the Copy of a Letter, which I addressed to Mr. Mackaness in Consequence, as likewise Copies of his Answer and of my reply, together with a Copy of the Resolutions of the Turf Club, therein referred to.

Non-renewal of
J. Mackaness'
appointment
as sheriff.

In coming to the determination not to re-appoint Mr. Mackaness, I have not been inattentive to the proof, which Your Lordship has been pleased to give of your confidence in my discretion. It is from a just sense of this confidence and a faithful discharge of the trust reposed in me that I shall feel myself bound not to renew Mr. Mackaness's Appointment as Sheriff. It appeared to me of much importance, in the existing State of Matters here, to point out to Mr. Mackaness (being satisfied the purport of my letter would soon be made known) that it was not on account of his proceedings at the public Meeting alone that he was to be discontinued, but from his general conduct which has been highly unbecoming an Officer of the Government.

Conduct of
associates of
J. Mackaness.

Mr. Mackaness's common Associates are Mr. Wentworth and Dr. Wardell; the former of whom, I have lately informed Your Lordship, designated the measures of the Government, at a trial in the Supreme Court, as "Diabolical and Damnable," while the latter characterised the Governor before the same solemn Tribunals as a "Tyrant, a Monster and a Scoundrel." If there were no other charge against Mr. Mackaness than his association with the common defamers of the Government, I presume to think that his removal from the Service would on this ground alone be fully and completely justified, as my firm belief is that the dismissal of all other persons, who have given these Individuals their Countenance, is necessary to the due Support of the Government.

Objections to
J. Mackaness as
public officer.

I shall not take up Your Lordship's time by entering into other Matters, which render Mr. Mackaness objectionable as an Officer of the Government, though I might point out his want of principle and the independence he wished to assume, as adverted to in the Enclosure No. 1. But it is enough that a person in the pay of Government has associated himself with its open and

avowed Enemies, and joined with them, as their companions have not failed to do, in the abuse of the Governor and the Government.

1827.
14 Dec.

If the facts, which I have stated in my Letter of the 29th of November to Mr. Mackaness, required any Confirmation, the Enclosure No. 4 will be found to contain abundant proof of his unfitness to hold any employment under the Government. It will be seen by the Enclosure No. 1 that he was in possession of Your Lordship's sentiments with respect to his conduct at the public Meeting in the Month of January last; notwithstanding which, he presided at the Meeting of the Turf Club* on the 11th inst., and signed as Chairman the Resolutions, contained in the Enclosure No. 4, on the offensive nature of which it is unnecessary for me to comment. I will only further observe here that it is my intention to report fully on the Subject by the present opportunity, and to acquaint Your Lordship with the steps I have taken in consequence of the proceedings of some Individuals at that Meeting.

Presence of
J. Mackaness
at meeting of
turf club.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

GOVERNOR DARLING TO SHERIFF MACKANESS.

Sir, Government House, 29th November, 1827.

The Right Honorable the Secretary of State for the Colonies, having had under consideration your conduct on the occasion of the public Meeting, which was held at Sydney on the 26th of January last, and his Lordship having observed that you had not confined yourself merely to presiding on that occasion, but that you had given your countenance to the proceedings, in which the existing Institutions of the Colony and the constituted Authorities underwent the most calumnious and indecent animadversion, and his Lordship considering that such conduct on the part of a public Officer cannot fail to produce the most serious Evils in a Colony, the Population of which is so peculiarly constituted as this is, has been pleased to desire, should your conduct appear to me to render your re-appointment as Sheriff at the close of the present Year inexpedient, to inform you accordingly.

Censure of
J. Mackaness
for conduct at
public meeting.

It now becomes my painful duty to apprise you, in pursuance of the orders conveyed to me by the Lord Viscount Goderich, that I have determined not to re-appoint you to the Office of Sheriff, considering from the circumstance to which his Lordship has drawn my attention, from your association and intercourse with certain factious Individuals, who in the most open and wanton manner have endeavoured to degrade the Government in the eyes of the Public, and to create discord between it and the People, as well as from the disposition you have evinced to

Re-appointment
of J. Mackaness
as sheriff
withheld.

* Note 143.

1827.
14 Dec.

Re-appointment
of J. Mackaness
as sheriff
withheld.

consider yourself independent of the control of the local Authorities, and not having rendered that prompt and willing obedience to the Orders of the Government, which is indispensable on the part of its Officers, without entering into other circumstances, that the true interests and happiness of the Colony and the success of the Government, whose duty it is to protect, these will be promoted by your being discontinued as a Public Officer.

I have, &c.,

RA. DARLING.

[Enclosure No. 2.]

SHERIFF MACKANESS TO GOVERNOR DARLING.

Sir,

Apsley Lodge, 13th December, 1827.

Regret at
censure passed
by Viscount
Goderich.

I have the honor to acknowledge the receipt of your Excellency's Letter of the 29th ulto. I cannot but seriously lament that His Majesty's Secretary of State for the Colonies has received such representations of my conduct on the 26th January last, as should induce him to draw a conclusion so detrimental to me, namely, "that I had not confined myself merely to presiding on that occasion, but that I had given my countenance to the proceedings in which the existing Institutions of the Colony and the constituted Authorities underwent the most calumnious and indecent animadversions." I have from an early period of Life attended Public Meetings in Berkshire, Oxfordshire and Middlesex, and I know from experience that interrupting a Speaker generally makes him more violent; and I beg your Excellency will assure my Lord Goderich that, if I have erred, it was from a conviction that my interference would have been more mischievous than the hasty words of a violent and impetuous Speaker. It must be in the recollection of many Gentlemen that I did interrupt Mr. S. Hall, when supporting the arguments of the mover of the address by what I considered perfectly irrelevant matter, and for so doing that Gentleman has declared he will move a vote of censure against me, should I ever convene another meeting.

Instructions
re duties as
sheriff.

My Lord Bathurst's Instructions and Mr. W. Horton's were that I should on all occasions act as I would do, if I was Sheriff of an English County. I may perhaps, in your Excellency's Opinion, have too strictly adhered to these Instructions. I have, however, at all times acted to the best of my judgement without any intention to pay the least disrespect to any of the local Authorities. As a sheriff of an English County is responsible only to His Majesty's Court of King's Bench, I have certainly considered myself only answerable to the Supreme Court. Had my Lord Bathurst instructed me to have followed your Excellency's directions as Governor of the Colony, I would cheerfully

have obeyed them, and I should have been relieved from much anxiety and responsibility in modelling the duties of a Sheriff of an English County to the state and condition of this Colony.

1827.
14 Dec.

With respect to my "association and intercourse with certain factious Individuals, who in the most open and wanton manner have endeavoured to degrade the Government in the Eyes of the public and to create discord between it and the people," I owe it to myself to disclaim having wilfully and knowingly done so, and if it is still Your Excellency's determination not to re-appoint me Sheriff, I trust you will do me the Justice to cause these allegations to be investigated. I have, &c.,

Request for
inquiry into
allegations.

J. MACKANESS.

[Enclosure No. 3.]

GOVERNOR DARLING TO SHERIFF MACKANESS.

Sir, Government House, 13th December, 1827.

I lose no time in acknowledging the receipt of your Letter of this date, which I have this moment received.

In observing that it cannot now be necessary to enter into any further explanation than is contained in my Letter of the 29th Ultimo of the grounds, on which the Government has thought fit that you should not be reappointed to the office of Sheriff, it will be sufficient to apprise you that, had no other cause existed, I should have considered it incumbent on me to discontinue you, as an Officer of this Government, from the circumstance of your having continued to preside at the Meeting, which took place on the 11th Instant, after the resolutions, which have been forwarded to me, were proposed, and having affixed your Name as Chairman to those Resolutions. You will observe, on referring to my Letter of the 29th of last Month, that, in adopting this course, I should have acted on the principle laid down in The Secretary of State's Instructions to me. It is unnecessary to add you were in possession of His Lordship's sentiments at the time.

Presence at
turf club
meeting
sufficient reason
for removal
from office.

I have, &c.,

RA. DARLING.

[Enclosure No. 4.]

RESOLUTIONS.

At a general Meeting of the Turf Club, held at the Sydney Hotel on Tuesday, the Eleventh day of December, 1827,

Resolutions
passed at
meeting of
turf club.

It was resolved:—

1st. That the Club, having at their last Meeting approved of the Speeches delivered by Mr. Wentworth as President at their last Dinner,* and having also acquitted the rest of the Members of the Club of all intention to offer any Insult to the Governor, regret that they are unable to afford His Excellency any further explanation.

1827.
14 Dec.

Resolutions
passed at
meeting of
turf club.

2nd. That it is not competent to the Club (the Club as a Body disclaiming all Politics) to enter into the motives of Mr. Wentworth's or Dr. Wardell's alleged hostility to the Government, which may or may not be of the Character alluded to in Lieutenant Condamine's last communication.

3rd. That a Copy of these Proceedings be transmitted for His Excellency's information, and be also published in the Newspapers.

JOHN MACKANESS, Chairman.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 123, per ship *Ephemina*; acknowledged by Sir George Murray, 30th August, 1828.)

My Lord,

Sydney, 14th December, 1827.

I am induced to bring under your Lordship's notice the late proceedings of the Turf Club, in which Mr. Mackaness, respecting whom I have had the honor of writing to your Lordship by this opportunity, is deeply implicated.

Mr. Francis Stephen, a Son of the Judge, having brought out a Cup* to be presented to the Club on the part of Sir Thomas Brisbane, a dinner was given on the occasion. I was invited, but declined attending, being extremely unwell at the time and having long since determined not to mix in such Associations. The enclosed Newspaper† will put your Lordship in possession of an Outline of the proceedings, which took place at the dinner, the Editor having since declared (being accused of having given an unfair report) that the offensive parts of Mr. Wentworth's speech were intentionally "softened down." This is, however, of little consequence; but I must request your Lordship's attention to the "Monitor" of the 15th of last Month, in the leading Article of which there are some observations respecting the Tune, which was played when my health was drank, and the feeling intended to be conveyed by it. The fact is simply as follows. On the toast being given, the Steward, who had the selecting of the Tunes, desired the Band to play the "Australian March"; but Doctor Wardell interposed and called for "Over the hills and far away," and, in the confusion of the moment, succeeded in having it played; on which I am informed by Mr. Savage, one of the Stewards, that he and his Colleague, Mr. Aspinall, desisted from any further concern in the conduct of the Meeting. I should have observed that Mr. Wentworth presided, and that Mr. Mackaness was the Vice President.

When the Dinner took place, I was preparing to go into the Country for a few days in the hope of benefitting by a change of air, and I did not see the report of the Dinner or hear of Doctor Wardell's proceedings until my return about ten days

Report on
proceedings of
turf club.

Dinner given
by turf club.

* Note 145. † Note 146.

after. I immediately directed my Aide de Camp to write to the Club, a Copy of whose Letter is enclosed, signifying my desire that my name should be discontinued as Patron. The club met to take this communication into consideration, and I received a Copy of the Resolutions entered into in consequence. There being no doubt that the intention of Mr. Wentworth and Doctor Wardell was to follow up the course of public insult, which they had sometime before commenced in the Supreme Court, as reported to your Lordship in my Despatch, marked Separate dated the 10th October last, I directed my Aide de Camp to write again to the Club and inform them I could not continue a Member of a Society, to which those Individuals belonged. On the receipt of this letter, another meeting of the Club was announced by Public Advertisement to take place on the 12th inst.; but, by the management of Doctor Wardell, who, in the republication of the Notice in the "Australian," changed the day appointed for the meeting to the 11th, a few members only were present, the Majority of whom being the immediate Friends of Mr. Wentworth and Doctor Wardell (Mr. Mackaness being in the Chair), The Resolutions of which I beg leave to enclose a Copy, were entered into.

1827.
14 Dec.

Resignation
of governor
as patron;

and as member.

Meeting held
to consider
resignation.

The Members* who voted for the Resolutions were:—

Mr. Wentworth, Barrister; Dr. Wardell, Barrister and Editor of the Australian; Mr. W. H. Moore, Crown Solicitor and late Acting Attorney General; Mr. Reddall, Junr., A Youth, Son of one of the Chaplains; Mr. Bailey, A Native, the Protégée of Mr. Wentworth; Attorney and Partner of Mr. Moore, Mr. Keith.

Voting on
resolutions.

And those who opposed the Resolutions were:—

Sir John Jamieson; Treasurer, Mr. Balcombe; Magistrates, Mr. McLeod, Mr. Raine; Clerk of the Supreme Court, Mr. C. D. Moore; Crown Solicitor, Mr. Garling.

The Votes being equal Mr. Mackaness, who was Chairman, gave his Vote in favour of the Resolutions. I am glad to find that the reputable Persons on the Spot are all withdrawing their Names from the Club, and I have little doubt that those in the Country will do the same, when apprised of the proceedings which have taken place. I now do myself the honor to enclose for your Lordship's consideration the Copy of a Government Order, which I have issued on the occasion; by which your Lordship will perceive that I have suspended Mr. W. H. Moore, Crown Solicitor (late Acting Attorney General), for having assented to the resolutions, and directed the dismissal of his Brother, Clerk of the Supreme Court, for having forwarded them.

Casting vote
given by
J. Mackaness.

Resignation
of members.

Suspension of
crown solicitor.

I should apologise for taking up your Lordship's time with so insignificant a matter, and I should have abstained from doing

* Note 147.

1827.
14 Dec.
Character
of members
concerned.

Effect of action
re J. Mackaness
and
H. G. Douglass.

so, had I not found it necessary to mark my disapprobation of the conduct of the Persons, whom I have removed from Office. As to these and the other Individuals, who have been concerned in the late proceedings, Your Lordship will perceive there is not a Man of Character or consequence amongst them, though the "Australian" and the "Monitor" would have it understood (and Doctor Wardell of course collected his friends on this occasion) that the Government is obnoxious in the extreme.

I already perceive that the measure, which has been ordered with respect to Mr. Mackaness and Doctoe Douglass, has had the best effect. A few more such Examples, which the conduct of some and the good Government of the Colony require should be made, will tend essentially to the peace and happiness of Society and render the conduct of the Government comparatively easy.

I have, &c.,
RA. DARLING.

[Enclosures Nos. 1 and 2.]

[These were copies of the issues of the "Monitor" newspaper,* dated 12th and 15th November, 1827.]

[Enclosure No. 3.]

LIEUT. DE LA CONDAMINE TO MR. G. G. MILLS, SECRETARY TO THE TURF CLUB.

Resignation of
governor as
patron of
turf club.

Sir,
Government House, 21st November, 1827.
I am directed by His Excellency The Governor to signify, for the information of the Members of the Turf Club, that His Excellency considers it would, under present circumstances, be derogatory to the Situation, he has the honor to hold as the Head of this Government, to continue as Patron of that association; and I am to express His Excellency's desire that his Name may be discontinued accordingly.

I have, &c.,
T. DE LA CONDAMINE, Aid de Camp.

[Enclosure No. 4.]

RESOLUTIONS.

Resolutions
passed at
meeting of
turf club.

AT a General Meeting of the Turf Club held at the Sydney Hotel, on Saturday, the 1st December, 1827.

It was Resolved:—

1st. That, in consequence of certain Public Statements, made relative to the late Dinner, given by the Turf Club in commemoration of Sir Thomas Brisbane, as injurious to the Club generally as to certain Individuals belonging thereto, an immediate Enquiry be instituted into the truth of those Statements, and the nature of the circumstances connected with them.

* Note 146.

2nd. Mr. Wentworth having been asked by the Club whether, in his Speech, he meant, either directly or indirectly by drawing invidious parallels, to offer any Insult to General Darling, Patron of the Club, Mr. Wentworth stated in reply that he did not draw any parallel or offer any Insult to His Excellency, and that the published Report of his Speech contained in the Monitor Newspaper is erroneous and unfair, which Statement is confirmed by the general impression of the Members who were present. The Club, having heard the explanations and statements of several Members in regard to the Air, which was played by the Band upon occasion of the Governor's Health being given, came to the conclusion that it was ordered irregularly, but certainly without any intention of the Parties, by whom it was suggested and proposed, to offer any personal offence to His Excellency, and that the Air in question was played without the Sanction of the Stewards or the knowledge of the Club generally.

1827.
14 Dec.
Resolutions
passed at
meeting of
turf club.

3rd. That a Copy of these Proceedings be transmitted to the Governor, and be also published in each of the Newspapers.

JOHN MACKANESS, Chairman.

A True Copy:—Signed CH's D. MOORE, Hony. Secy., Turf Club.

[Enclosure No. 5.]

LIEUT. DE LA CONDOMINE TO MR. C. D. MOORE, HON'Y SECRETARY
TO TURF CLUB.

Sir,

Government House, 4th December, 1827.

I am directed by His Excellency The Governor to acknowledge the receipt of your Letter transmitting a Copy of the Proceedings, which took place at a Meeting of the Turf Club, held on the 1st instant; and I am now to acquaint you, for the information of the Club, that His Excellency did not suppose that the Club as a Body, amongst whose Members there are many respectable persons, had intended any disrespect to his Person or Government. But, as His Excellency still retains the impression he had received with respect to the intentions of Mr. Wentworth and Dr. Wardell, and as the general conduct of those Individuals has been marked with the most determined and unprovoked hostility to the Government, His Excellency must continue to think it would be derogatory to his Character to continue his Name as a Member of a Society, to which they belong.

Resignation of
governor as
member of
turf club.

I have, &c.,

T. DE LA CONDOMINE, Aid de Camp.

[Enclosure No. 6.]

[This was a copy of the resolutions which formed enclosure No. 4 to despatch No. 122; see page 641.]

1827.
14 Dec.

General order
consequent on
resolutions of
turf club.

[Enclosure No. 7.]

GOVERNMENT ORDER No. 43.

Colonial Secretary's Office, Sydney, 13th December, 1827.

HIS EXCELLENCY The Governor having received a Paper, signed "John Mackaness," purporting to be the Resolutions entered into at "a general Meeting of the Turf Club," held on the 11th instant, which Meeting appearing to have been surreptitiously obtained through the means of The Australian Newspaper, His Excellency would not do the Turf Club so great an injustice as to impute to it as a Body such a gross dereliction of every proper feeling, as to receive the ebullitions of five or six factious Individuals as the expression of the sentiments of the Turf Club generally. The Paper alluded to has, therefore, been received as it merits.

The Government having already determined that Mr. Mackaness shall not be reappointed as Sheriff, His Excellency thinks it unnecessary to remark on his Conduct, as an Officer of the Government, in continuing to preside at the Meeting above referred to, after the resolutions had been proposed, and in affixing his Name as Chairman to Resolutions of the Character of those, which have been forwarded under his Signature to the Governor.

His Excellency has been pleased to direct that Mr. W. H. Moore, Crown Solicitor, who assented to the Resolutions passed at the Meeting of the Turf Club held on the 11th instant, shall be suspended from the Functions of his Office until the pleasure of the Secretary of State shall be known.

His Excellency has further been pleased to intimate his desire to His Honor the Chief Justice that Mr. C. D. Moore, who, as Secretary of the Turf Club, forwarded for the Governor's information the Resolutions above referred to, be immediately dismissed from his Situation as Assistant Clerk in the Supreme Court.

His Excellency avails himself of this opportunity of intimating to the officers and Persons employed by Government, whose names may still appear as Members of the Turf Club, that their continuance as such would be inconsistent with their duty to the Government.

By His Excellency's Command,

ALEXANDER MCLEAY.

UNDER SECRETARY STANLEY TO GOVERNOR DARLING.

(Per ship Wave.)

15 Dec.

Sir,

Downing Street, 15th Decr., 1827.

Mr. John Taylor, who is about to proceed as a Settler to New South Wales, will have the honour of delivering this letter to you, and, having been recommended to Mr. Secretary Huskisson by the Honble. Henry Lidell, Member for Northumberland, I am to desire that you will afford to Mr. Taylor such facilities in the selection of his Grant of Land, as may not be inconsistent with the established Regulations.

I have, &c.,

E. G. STANLEY.

Recommendation in favour of J. Taylor.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 124, per ship Ephemina; acknowledged by Sir George Murray, 30th August, 1828.)

1827.
15 Dec.

My Lord,

Sydney, 15th Decemb'r, 1827.

I have the honor to acquaint your Lordship that I communicated to Doctor Douglass on the 3d inst. your Lordship's Despatch, No. 28 of the present Year, respecting the part he took at the public Meeting, held in January last, to which communication I have not yet received an Answer.

Censure
communicated
to H. G.
Douglass.

I now beg to refer your Lordship to the Report of the Proceedings at a Dinner, given by the Turf Club, as contained in the "Monitor" Newspaper* of the 12th inst., under the head of "Domestic Intelligence"; on which subject, I have had the honor of writing to your Lordship fully by the present Opportunity in my Despatch No. 122, and to which I am constrained to refer your Lordship from the want of time to enter into the particulars in this place.

Dinner given
by turf club.

Your Lordship will perceive by the "Monitor," which accompanies the above Despatch, that Doctor Douglass is reported to have proposed Mr. Wentworth's health, as soon as he had concluded his Speech. It is of little consequence whether Dr. Douglass chose to consider the insinuations thrown out by Mr. Wentworth as implying censure on me or not. He and every person in the Colony is aware of Mr. Wentworth's threats to impeach me, and of the Language he made use of in the Supreme Court with reference to the measures of the Government, as reported in my Despatch of the 10th October, marked "Separate." Therefore, coupling his conduct on the occasion now alluded to in giving the health of Mr. Wentworth at a public Dinner with that at the meeting, held in January last, it is my intention, as soon as the necessary Arrangements can be made for the performance of the duties of the Commissioner of the Courts of Requests, to remove Doctor Douglass, in furtherance of the intimation made to him in consequence of Your Lordship's Despatch No. 28.

Health of W. C.
Wentworth
proposed by
H. G. Douglass.

H. G. Douglass
to be dismissed
from office.

If I should have appeared tardy in noticing these proceedings, or in resorting to the measures necessary to correct them, I must found my excuse on the State of the Government. I have been apprehensive that I have wearied your Lordship's Predecessor with my reports of the conduct of the public Officers, and, though I could not doubt the view which His Majesty's Government would take of their proceedings, I was anxious to be confirmed in the opinions I had myself entertained respecting them.

I have, &c.,

RA. DARLING.

* Note 146.

1827.
15 Dec.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 125, per ship *Ephemia*; acknowledged by Sir George Murray, 27th June, 1828.)

My Lord, Government House, 15th December, 1827.

W. Carter to
be appointed
sheriff.

I do myself the honor to inform Your Lordship that it is my intention to appoint Mr. Carter, who at present holds the Situation of Master in Chancery and Chairman of the Quarter Sessions, to the Office of Sheriff in the room of Mr. Maekness, who will be discontinued at the end of the present Year, as notified in my Despatch No. 123.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch marked "Private and Confidential," per ship *Ephemia*.)

My dear Sir, Govt. House, Sydney, 15th December, 1827.

Effect of
removal of
J. Mackness on
civil officers.

I have little to add to the communications contained in my Despatches by this Opportunity. The Lesson, the Public Officers have received by the removal of Mr. Mackness, has had a very salutary effect. Seeing they had gone too far, they had before endeavoured to temporise and explain. Now, they are evidently alarmed from the *Chief* downwards. The System has been to preach up independance, that Officers having performed the duties of their Office are no longer accountable to or under the control of the Government. Thus has that unfortunate Man Mr. Stephen been misled, who has been taught to believe that it was *unconstitutional* even to ask him a question, and the poor Man has put his name to Letters written by Mr. Forbes. The latter has writhed under the diminution of power, which he acquired during Sir Thomas Brisbane's Administration, and he has endeavoured to raise an Opposition to the Government. If you take the trouble to look at a Letter in the Sydney Gazette* of the 12th of this month, signed "Raleigh," which I beg you will do, you will perceive what Mr. Forbes's conduct has been. I assure you I have no knowledge of the Letter, or by whom it was written; but it is impossible to doubt for a moment that Mr. Forbes is the person alluded to. In speaking of Mr. Mackness's removal, it goes on, "To say that more designing Men have led him into error (and I am ready to admit it) is only acknowledging his culpability," etc. At the same time that Mr. Mackness questioned the right of the Government to interfere with his Office, he more than hinted he had been led into the Serape by the Chief Justice. Again, "Men, who ought to do better things but who are prostituting the noblest gifts of nature, reason and intelligence, to the worst of purposes." Every one admits

Criticism of
F. Forbes.

* Note 148.

that Mr. Forbes possesses superior talents, though certainly in his conduct no Man has shewn less judgment, less common sense. Stung by disappointment, he has been blind to or disregarded all consequences. I shall not intrude on your time by continuing this subject further than by assuring you that Mr. Forbes himself appears perfectly aware of the fate which attends him. He now gives out that his Family cannot live in this climate, and that he is most anxious to leave the Country. He lately mentioned to Mr. McLeay that he should apply for leave, as soon as Mr. Dowling should arrive; but I shall most certainly not grant it, Mr. Stephen being in a very feeble infirm State of Health, so much so as not to have been able to attend the Courts for some time past. If you have any desire for more information respecting the Turf Club than I have given in my Despatches, you will find a detail of the proceedings in the Sydney Gazette* of the 14th inst., which however is not altogether correct. I beg you will believe, notwithstanding the proceedings of the *assumed* Turf Club, that nothing can be more peaceable than the Colony. I might instance the *majority* on that occasion, as some proof of the general feeling with respect to the Government. It consisted of five Lawyers and Attornies and two ignorant Striplings, though Doctor Wardell and Mr. Wentworth had exerted themselves to rally their friends, and resorted to trick to prevent the other Members from attending.

1827.
15 Dec.

Criticism of
F. Forbes.

Tranquillity
of the colony.

I remain, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch marked "Private," per ship Ephemina.)

My dear Sir,

Sydney, 16th December, 1827.

16 Dec.

I have notified, in my despatch No. 126, the resignation of Mr. Campbell, the Collector of Customs, and the temporary Arrangement I have made for the duties of that Office. I should feel very much obliged if, under the disappointment Captain Dumaresq has experienced, he were to be placed in the Situation of Collector; and I beg to recommend him accordingly for that appointment. I assure you he is not only a most zealous Officer, but one of the most useful and competent persons in this Government. In short, I should have suffered much inconvenience, had it not been for the assistance he has afforded me, not merely in his Office as Civil Engineer, but on all occasions in which his Services could be rendered available.

Recommend-
ation of
W. Dumaresq
as collector
of customs.

I remain, &c.,

RA. DARLING.

* Note 149.

1827.
16 Dec.

GOVERNOR DARLING TO MR. JAMES STEPHEN.*

(Despatch marked "Private." per ship Ephemina.)

My dear Sir.

Sydney, 16th December, 1827.

Letter
acknowledged.

Criticism of
conduct of
John Stephen.

I will not allow the present opportunity to pass without thanking you for your letter of the 12th of June, which I have lately received. I shall endeavour to write you a few lines to-morrow on the subject of the New South Wales Bill, the Draft of which accompanied your letter, and I shall now confine myself to other points. I assure you no man could feel more embarrassment than I have from the conduct of your Uncle on various occasions, and particularly as I am satisfied it has not altogether proceeded from himself. A Man of his Years, however, can lay but little claim to being excused on the Score of having been made a Dupe of, as it is too evident he has been. I pointed out to you, some time since, the circumstance of the publication of my correspondence with him in the "Australian." Those, who had access to him, must have obtained the Documents and furnished Doctor Wardell with the information. He has been taught to believe too that any communication to him on the part of the Government, not to say interference, is *unconstitutional*. I can hardly believe he entertains these notions himself, and it is to be regretted he should permit designing, mischievous Men to make a Tool of him. I referred a complaint to him of the Arch-deacon's, on which occasion I must say Mr. Scott was treated in a very gross manner under the Eye of your Uncle, then presiding in Court. He, however, declined forwarding his reply through me. On more recent occasions, he has sat on the Bench and heard Wentworth and Wardell abuse both the Government and myself in the foulest manner, without offering the least comment or observation on the occasion. I have refrained from seeking any explanation from him, not chusing to see myself exposed again in the papers. I had no sooner communicated Mr. Scott's Representation to him, than it was in possession of Doctor Wardell, and the subject was given in the Australian fully, with the Editor's comments. It matters not whether a Person furnishes the Materials directly to the Papers, or allows those, who have access to his House, to obtain them. The mischief is the same. It has, I assure you, been most painful to me to notice the circumstances; but, betrayed as this Government has been by those whose duty it was to support it, I have been compelled to report the several matters, which I have now alluded to. I need not attempt to conceal from you what is obvious to every one. Your Uncle, from the State of his Health and other circumstances, is not equal to the duties of his Office, and unfortunately he has not had discernment to see the advantage,

which has been taken of him. As to the publications in the "Australian," I am satisfied he has been cajoled by a certain person, who gave some trouble in Downing Street before I left England, and who I believe to be as arrant an Intriguer as ever embarrassed any Government. I hope soon to be rid of him. He has, I conclude, made a point of establishing himself with your friends here by way of obtaining your support at Home. Depend upon it, He is in no respect deserving your countenance. You will perhaps hear from your Cousin Francis that I have not acted with respect to him, as he may have expected. I shall tell you very honestly I have not had much reason to be satisfied with his proceedings. Without entering into other matters, I cannot but highly disapprove of his conduct as connected with the Turf Club, of which you will have more than such a subject merits. He has appeared to me to put himself, as a Young Man, very unnecessarily forward on the occasion, when he had no business to interfere. I saw him, after I had written to desire my name might be withdrawn, and told him distinctly I would subscribe to nothing short of the expulsion of Mr. Wentworth and Doctor Wardell from the Club, after the insult they had offered to me at the Dinner. As I took the trouble to explain my Sentiments, I expected, if he interfered at all, which I did not wish he should, that he would have acted in conformity to them; instead of which, he submitted a proposition to the Club that I should be informed the Club had no intention of offending or offering me any insult. The object of which appeared to every one to be to get Messrs. Wentworth and Wardell out of the Serape. I saw him after this; and, though I was disposed to think favorably of his intention, I could not be satisfied with his proceedings on the occasion. He appears to be a clever young Man, but altogether he has shewn less tact since his Arrival here than could have been supposed; Busy and meddling on all occasions, the friend and Champion of Doctor *Douglas*, and the Protégée of the Chief Justice. You will agree with me, as I have nothing more agreeable to write about, that I had better conclude. I will not, however, do so without assuring you of my desire and intention of employing your Cousin; and I have only not done so before this, wishing he should be aware I was not satisfied with his proceedings, and that he might be more circumspect than he appears to have been. Be assured, my dear Sir, that the Annoyances, I have experienced here, have in no respect diminished the regard with which your kindness has impressed me. It is some proof that your Uncle has been a mere Agent, and it is not a little singular that to this moment he

1827.
16 Dec.

Criticism of
conduct of
John Stephen.

Criticism of
F. Stephen.

Proposed
employment of
F. Stephen.

1827.
16 Dec.

appears unconseious of any cause of misunderstanding between us, though my correspondence with him has been publicly exposed in the Opposition Papers. Believe me, &c.,

RA. DARLING.

P.S.—It is now past 12 at night, and I am fatigued after a hard day's work, besides being extremely unwell. You must therefore excuse, if you cannot fully comprehend my Letter.

R.D.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 126, per ship *Ephemia*; acknowledged by Sir George Murray, 22nd June, 1828.)

17 Dec.

Appointment of
F. N. Rossi as
collector of
customs.

My Lord, Government House, 17th December, 1827.

I have the honor to inform Your Lordship that, Mr. J. T. Campbell having resigned the Appointment of Collector of Customs, I have placed Captain Rossi, the Comptroller, in that situation, discontinuing for the present the latter Office.

Captain Rossi will receive, as Acting Collector, according to the Instructions contained in Earl Bathurst's Despatch dated the 11th September, 1826, No. 65, a Moiety of the Salary as Comptroller, which is £400 a year, and a Moiety of the Salary of Collector, £600 a Year, making together £1,000; and I should recommend that the Salary of Collector be fixed at this latter sum, instead of £1,200, as formerly proposed on the Suggestions of the Board.

Temporary
discontinuance
of office of
comptroller.

The discontinuance of the Office of Comptroller is intended merely as a temporary arrangement, and I have no doubt of the necessity of the Office, and I shall fill up the Vacancy as soon as I can find a proper person to place in it.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship *Ephemia*.)

My dear Sir, Sydney, 17th December, 1827.

Remarks on
N.S.W. bill.

I enclose a Paper, containing some "Remarks" on the New South Wales Bill,* which was laid before Parliament in the month of May last. It is, however, unnecessary for me to trouble you further on the subject, as I have written fully to Mr. Stephen, and have sent him a Copy of the enclosed Paper. I shall take the opportunity of saying a few words on the subject of Doctor Douglas's removal from Office, which I cannot but consider necessary, as his conduct at the Meeting in January last

Removal of
H. G. Douglass
from office.

was certainly more objectionable than Mr. Mackaness's. Being exceedingly occupied at this moment, I have not yet made the communication to him; but my publick Letter by this Opportunity will explain the grounds, on which I have determined on the measure, and I trust they will be considered sufficient. One of Doctor Douglas's misfortunes is that he considers himself an Orator, and he consequently attends every Dinner and Meeting, where he can have an opportunity of speaking. He lately proposed leaving this, if I would recommend his receiving an Appointment in some other Colony, and has expressed a desire to obtain Leave of Absence. I declined acceding to his requests, as, if he is an unfit person for an Appointment here, he must be so in any other Government, though perhaps in a Colony, differently constituted, he would be less mischievous. I am bound to endeavour to excuse my not having noticed his conduct at the public meeting, and I will frankly acknowledge I had paid little or no attention to it. I was not aware he had been so prominent on that occasion, I mean the meeting in January last, until I received Lord Goderich's Despatch. He would now take merit for being no longer on terms of intimacy with Doctor Wardell, and instanced the manner in which he had conducted an investigation respecting some Sheep sold by him, Doctor Douglass, to the Australian Company, which Mr. Terry claimed as his property. The fact, I understand, is that he and Doctor Wardell disagreed on some matter, and their present coolness is no proof that an improper intimacy had not previously subsisted between them. It is well known that they have been on the most intimate terms, and *he* is pretty plainly threatened in the Sydney Gazette of the 19th of last October, for having furnished Doctor Wardell with information on more occasions than one. It would perhaps have been better, had he been removed for his proceedings in January last, though the Cause is strengthened by his conduct at the Dinner of the Turf Club in countenancing Mr. Wentworth and proposing his health. I think you will agree with me, as Mr. Mackaness is not to be reappointed, that Doctor Douglass could not be retained in Office with any degree of consistency. Mr. Mackaness was in a private Character both at the Meeting in January and at the Turf Club, being the Chairman; whereas Doctor Douglas was a Volunteer as well at the former as at the Dinner in November, and was much more prominent than Mr. Mackaness on both occasions; the latter acquiesced, but the former acted. I have entered into this explanation that you may be satisfied, as I am, of the propriety of Doctor Douglas's removal on the Grounds stated, without entering into his intercourse with Doctor Wardell or the effects

1827.
17 Dec.

Removal of
H. G. Douglass
from office.

Criticism of
conduct of
H. G. Douglass.

1827,
17 Dec.

of it. You will judge from these occurrences how much my attention is diverted from the public Business; but I am unwilling to believe the effect will be ultimately beneficial.

I remain, &c.,

RA. DARLING.

[Enclosure No. 1.]

Remarks on
N.S.W. bill.

REMARKS on the Bill, submitted to Parliament in May, 1827, to provide for the permanent Administration of Justice in New South Wales and for other purposes.

1st. Page 2. Line 17. It is not, I presume, intended that the Governor of New South Wales shall appoint a Judge when a Vacancy happens in Van Diemen's Land.

2nd. Page 3. Line 20. It is declared that all the Laws in force in England upon the 19th July, 1823, shall be applied to the Courts in New South Wales, so far as the same can be applied in this Colony. According to this, the Judges here will be vested with very extensive powers. Is it intended that they are to determine what Laws do and do not apply? It has been proved more than once that they are not infallible; and it may be well to consider whether such extensive powers should be given to them, as would be granted by the proposed Clause. The Chief Justice's Interpretation* of the 8th Sect. of the 5th Geo. 4, Ch. 84, is one proof of this, which has been referred Home, and others could be immediately adduced.

3rd. Page 6. Clause respecting Juries. This Clause is silent with respect to the Qualifications of the Jurors, which it is most important should be defined by the proposed Act, rather than be left to be determined here. I beg to refer to the proceedings of the Executive Council on this Subject, which accompanied my Despatch, No. 57 of last Year; and I would further submit whether, considering the Composition of this Population, it might not be advisable, whenever trial by Jury shall be extended to this Colony (in order to prevent the effect of any improper feeling on the part of pardoned Convicts admitted as Jurors), to allow the Verdict to be determined by a majority, as I believe is the case in Scotland, rather than by the unanimous voice of the Jury.

4th. Page 11. Lines 2 and 3. The wording of the present Act is altered here. It appears to me, although the difference is not very important, that the term *is not repugnant to the Laws of England* would be preferable to "is consistent with the Law of England." The proceedings† in the Case of the Bill respecting the Press shew that the powers of the Chief Justice cannot be too accurately defined. It will be seen by the Reports, transmitted Home, that Mr. Forbes has considered himself the Judge

* Note 36. † Note 152.

of the Policy, as well as of the Legality of the measure, and that it is the Chief Justice, who is to determine as to the amount of any Tax to be levied. In short, that in this respect the whole powers of the Government vest in the Chief Justice. I beg to submit whether every purpose would not be effectually answered, if the Chief Justice were to certify *that the principle of the proposed Bill is not repugnant to the Law of England*, leaving the Governor to judge of the policy or necessity of the measure, and the Council to pass or reject the Bill according to their Opinion of its expediency. Instead of having the whole power as the Chief Justice claimed on the occasion above alluded to, he would in this case judge as to the *principle* of the Bill; and, should the subject be submitted to the Executive Council, he would likewise have a voice as to its *policy*; and further, as a Member of the Legislative Council, he would in common with the other Members have an opportunity of considering the amount or extent, to which it might be proper to carry the measure; and I presume it never was intended that he should possess any further power.

1827.
17 Dec.

Remarks on
N.S.W. bill.

5th. Page 11. Line 6 to 23. I beg to suggest whether it would not be more clear and satisfactory to state that all Laws, passed by the Governor and Council, shall remain in force until His Majesty's pleasure shall be known. But, in the event of His Majesty's disapprobation not being notified within a certain period (to be named), that the Law or Ordinance shall be considered valid, the same as if His Majesty's Approbation had been formally signified. It would, I think, appear that this is the object of the Bill, as it now stands.

6th. In the Bill alluded to, the term "Council" is frequently made use of, when applying to Acts which relate exclusively to the Executive Council, without specifying any particular Council, whereas the Bill and indeed the present Act have reference only to the Legislative Council.

7th. The Bill being silent with respect to the Courts of General Quarter Sessions and the Courts of Requests, will not these Courts cease to exist when the Bill is passed?

I shall now remark on the omission of certain Clauses of the present Act in the New Bill.

8th. May not the omission of the 13th and 14th Clauses of the present Act, respecting Appeals to the Governor, occasion inconvenience in Cases of Equity, though the Governor can never desire to possess the power of determining such Cases?

9th. The 25th Clause of the present Act being omitted, should not the Governor have Authority to proclaim Martial Law without reference to the Council in cases of Rebellion or Insurrection?

1827.
17 Dec.
Remarks on
N.S.W. bill.

10th. Do not the powers of Taxation, rendered perpetual by the 28th Clause of the present Act, cease by the omission of that Clause in the new Bill (See the last Page)?

11th. By the 32d Clause of the present Act, the Members of Council take precedence after the Judges of the Supreme Courts, these being, at the time of passing that Act, the Chief Justices of New South Wales and Van Diemen's Land only. Query, Is the term "Council" intended to apply to the Legislative Council, and should not the Members of Council take precedence of the Puisne Judges, as in India?

12th. If the 36th, 37th and 38th Clauses of the present Act be omitted, how are the provisions thereof, which appear important, to be carried into effect? With respect to the last, I believe there is a separate Act, as there may be in the case of the two other Clauses, though I do not immediately recollect them.

13th. It is submitted that a Clause be introduced in the New Bill, requiring *the Clerk of the Council* to take the Oath of Secrecy, the same as the Members; I have required them to do so, but the Chief Justice has intimated that they are not legally bound by such Oath.

17th December, 1827.

R.D.

N.B.—I am induced, on more mature consideration of the effects of the new Bill, to request the particular attention of His Majesty's Govt. to the consequences of the omission of the 28th Clause of the present Act. I presume the Governor would be deprived of the power of imposing Duties on Spirits, Tobacco, etc., by which a very considerable portion of the Revenue, now applicable to *general Purposes*, could no longer be collected. The Legislative Council might no doubt impose duties on those Articles; but the Revenue, arising from Duties so imposed, would not in the same manner as at present be applicable to general purposes, and much inconvenience would be occasioned by the Govt. being obliged to impose Taxes or duties for every particular object. In short, the sweeping manner, in which every matter relating to the power of the Executive is done away by the new Bill, appears to require serious consideration before the Bill is adopted. I must think the effect would be injurious.

RA. DARLING.

[Enclosure No. 2.]

EXTRACT from Lieutenant General Darling's Letter to James Stephen, Junr., Esqr., dated 17th December, 1827.

You will be aware I could not avail myself of Mr. Forbes's Assistance, and will soon discover that I have had no legal aid in drawing up the enclosed. You may perhaps remark that my opinions on this subject are in some respect altered, since the

Criticism of
N.S.W. bill
by governor.

Bill was forwarded by Mr. Forbes. The fact is the Original was sent away without his having afforded me an Opportunity of seeing it, though he had had it nine or ten Months in hand. I expressed some surprise at this; and asked to see the Copy or Duplicate, when some alterations were suggested, which he promised to make before forwarding it. But I have no knowledge of the alterations having been made, or even of the Duplicate having been forwarded. Mr. Forbes's politics had evidently taken a turn, at the period I am now alluding to; and he certainly had no intention of communicating the Bill to me, until I expressed my wish to see it. As far as regards myself, I am perfectly indifferent as to the alterations he has proposed, *though it is pretty evident that he has been anxious to perpetuate and extend his own powers, and to curtail those of the Governor.*

1827.
17 Dec.

Amendments
on bill by
F. Forbes.

Object of
amendments.

I should mention to you that Mr. McArthur called here a few days since, and enquired about the Bill. I told him a Copy had been sent out, but, as it had already appeared in the Colonial Papers and had not excited any interest, I had not yet looked into. He adverted to two or three points, the Qualifications of the Jurors which is not specified, and the discontinuance of the Appeal to the Governor. It is certainly very desirable that the former should be settled at home, and I beg you will do it; therefore, pray do not leave it to us, as it would occasion some embarrassment. I am very glad to perceive the manner in which the subject is taken up generally in the New Bill, as the propositions, contained in my Letter of the 9th February last, were only brought forward "in the Event of the matter being taken up earnestly in the House of Commons," and not from any opinion I entertained that a Material change should be made, if it could be avoided. I stated, in that Letter, "that the Colony was by no means prepared for such an Institution as a Legislative Assembly," and I am now more than ever convinced of it; the idea is absurd in the extreme. It would I am confident be attended with very injurious consequences. It would unsettle the people and divert them from the necessary attention to their business; and I have no doubt would render many of the Members who, now as Individuals, are peaceable and well disposed, troublesome, if not insolent, as they gained power and importance. Giving this Colony a Representative Body would in fact be forcing it beyond its strength and powers; it would have the effect of retarding instead of advancing it; and the reflecting part of the community see this; while there are others, though the People in general are perfectly indifferent about the matter, who are worked upon by Wentworth's inflammatory Speeches for the moment and the Radical Articles in the Monitor and

Criticism
of bill by
J. Macarthur.

Objections to a
legislative
assembly.

1827.
17 Dec.
Number
proposed
for council.

Australian. I should certainly recommend, if you can confine the Number of the Council to *twelve*, that that number should not be exceeded; the Australian Company will not I think oppose you in this. If they are guided by their Friends here, the Colonists will not I think have to boast of any great extension of their privileges, and it is altogether better it should be so.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 127, per ship *Ephemia*: acknowledged by Sir George Murray, 28th June, 1828.)

19 Dec.
Appointment
of — Hallen as
town surveyor.

My Lord,

Government House, 19th December, 1827.

I have the honor to acquaint Your Lordship that I have given directions for the employment of Mr. Hallen (lately arrived from England) as "Town Surveyor," instead of attaching him to the Surveyor General's Department.

Mr. Hallen is now placed under the Civil Engineer, in which Department, from the Nature of Mr. Hallen's qualifications, as pointed out in Mr. Hay's letter notifying his appointment, and from Captain Dumaresq's report who has examined him, it appears he may be rendered very useful to the Government.

It will be seen by the report, which accompanied my Despatch No 48 of the present Year, that the employment of a Town Surveyor had been contemplated as necessary with a view to preserving the order of the Streets and the regularity of the Buildings, etc. I beg to add that Mr. Hallen's services will not be confined to Sydney, but will extend to the other Towns, as they advance so as to require his Superintendence.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 128, per ship *Elisabeth*: acknowledged by Sir George Murray, 7th August, 1828.)

21 Dec.
Salary of
W. Dumaresq as
civil engineer.

My Lord,

Government House, 21st December, 1827.

I do myself the honor to transmit to Your Lordship the enclosed Copy of a Letter from Captain Dumaresq, whose case I have already brought under Your Lordship's Notice in my Despatch No. 77/1827, requesting that his Salary and Allowances, while he continues to act as Civil Engineer, may be made equal to what he received previously to his being placed on Half Pay.

I have Authorised his receiving a Salary at the rate of £500 a Year (without any other Allowance) as fixed by Earl Bathurst, until I have the honor to receive Your Lordship's Instructions.

But I trust, as Captain Dumaresq cannot draw Half Pay under the existing regulations, that Your Lordship will permit of his being paid at the rate of £800 a year, which sum is certainly not more than a reasonable remuneration for the Services he performs.

1827.
21 Dec.

I can only repeat my opinion that no Man will be overpaid by such a Salary, who discharges the duty of Civil Engineer in a Conscientious and Zealous Manner. In addition to this duty, Captain Dumaresq renders much useful assistance to the Government on other public Services, in which I find it necessary frequently to employ him. For example, being one of the Most active Members of the Committee of Management of the Factory, he proceeds regularly to Parramatta every Week, which involves other Expenses in addition to those attending a Journey of 32 Miles, for which he receives no Allowance whatever.

Activities of
W. Dumaresq.

I have, &c.,

R.A. DARLING.

[Enclosure.]

CAPTAIN DUMARESQ TO COLONIAL SECRETARY MACLEAY.

Sir,

Sydney, 7th December, 1827.

Having been placed on the Half Pay of the Army from the 15th May last, and this measure having been adopted without my obtaining the appointment* solicited when my application to retire from the Service was forwarded, a circumstance which His Excellency the Governor is well aware of, I beg leave to represent for due consideration the difference it occasions me in a pecuniary point of view, and to express a hope His Excellency will see the justice of making up, by an encrease to the Salary of the Office I hold from the date of my Secession, the loss thereby sustained.

Application
from
W. Dumaresq
re his salary.

The Emoluments of my Full Pay Commission were:—

Pay at 15s. 8d. per Diem, £285 18s. 4d.; Contingent Allowance at 1s. 6d., £27 7s. 6d.; Forage Allowances for 2 Horses 5s., £91 5s. 0d.; Lodging do. at £70 pr. An., £70; Rations for self and 2 Servants 2s., £36 10s. 0d.; Salary as Civil Engineer 20s., £365; —£876 0s. 10d.

I have, &c.,

WM. DUMARESQ.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Elisabeth.)

Sir,

Government House, 21st December, 1827.

I have the honor to acknowledge the receipt of Your Letter of the 21st of June last, and to acquaint you that the Sums advanced to Messrs. Cormick and Amsden, the Police

Repayment of
advances by
police officers.

* Note 153.

1827.
21 Dec.

Repayment of
advances by
police officers.

Officers sent out from England, are in course of Payment, as appears by the enclosed Copy of a Letter from the Acting Auditor of Accounts. There has been much difficulty in obtaining payment of these Sums, one of the Individuals having been in Jail for some time, and the other not having been arrested, only in Consequence of his Creditors not conceiving it would facilitate the payment of his Debts.

I have, &c.,

RA. DARLING.

[Enclosure.]

MR. S. RYRIE TO COLONIAL SECRETARY MACLEAY.

Sir,

Audit Office, 11th October, 1827.

In reply to Your Letter of the 9th Inst., No. 252, I have the honor of acquainting You that the Advances made to Messrs. Cormick and Amsden previous to their leaving England, say £180 each, has been refunded, except a balance of £41 6s. 2d. still due by each; but a part of it will be deducted Quarterly, until the whole is paid up.

I have, &c.,

S. RYRIE, Acting Auditor.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 129, per ship Elisabeth.)

22 Dec.

My Lord,

Government House, 22d December, 1827.

Payment of
superintendents
of stock.

I have the honor to acknowledge the receipt of Earl Bathurst's Despatch, dated the 12th December last, No. 103, respecting the mode which had been adopted by my predecessor of remunerating the Superintendents of the Stock and Agricultural Establishments, as represented in my Despatch of the 24th of July, No. 47 of last year, and more particularly as respecting the case of Mr. Maxwell, who had been promised a Pension under that arrangement.

Fixed salary for
J. Maxwell.

I have now the satisfaction to state to Your Lordship that Mr. Maxwell understands, by his acceding to the measure which I have adopted of granting him a fixed Salary of £250 a Year from the date of his appointment, that the former Arrangement is suspended, and that he is not to receive any further allowance or Pension.

Reduction of
stock and
agricultural
establishments.

As the expediency of doing away the several Stock and Agricultural Establishments is frequently adverted to in the Communications I have had the honor to receive, I beg to observe that I have been so much impressed with it from the first Moment of assuming the Government, that I immediately made arrangements to that effect, and the measure has been continued by the

progressive Sale of the Stock and reduction of the Quantity of Land under Cultivation. I need not point out to Your Lordship that any sudden Step to effect these objects would in the State of the Colony have been attended with injurious consequences; and I only hope Your Lordship will rely on my accomplishing what appears so desirable without unnecessary delay.

I do myself the honor to transmit for Your Lordship's information a Statement of the Stock, which has been disposed of since my arrival and that remaining on hand. I beg to add that a further Sale will shortly take place of about half the present numbers; but, Money being very scarce just now, the proceeds will either be inconsiderable, or credit to some extent must be given. I shall, however, endeavour so to arrange it, as to answer as far as may be practicable the views of the Government without distressing the Settlers.

The Agricultural Establishment at Bathurst will be broken up, as soon as the present Crop is taken in, and that at Wellington Valley has been reduced from 300 Acres to 50 Acres. The retaining of this quantity of Land under Cultivation is indispensable, as that Settlement being remote such Prisoners, as from their Abilities or habits are likely to prove troublesome, are sent to that place, and it has further been considered advisable to raise a proportion of the Grain there required for the Mounted Police, employed in the Bathurst District, so as not to be entirely dependent on the supplies of the Settlers.

I have, &c.,
RA. DARLING.

[Enclosure No. 1.]

STATEMENT of Crown Live Stock sold by Public Auction, New South Wales, From 1st January, 1826, to the 31st December, 1827.

Date of Sale.	Where sold.	Description of Stock.					Remarks.
		Horses.	Horned Cattle.	Sheep.	Goats.	Pigs.	
1826.							
January 16	Carter's Barracks	15	..	..	..	..
March 30	Parramatta .....	..	1,605	..	..	..
April 24	Newcastle .....	..	85	..	..	..
May 24	Newcastle .....	..	8	..	..	..
June 23	Parramatta .....	..	..	423	..	..
April (1827) 18	Parramatta .....	..	220	280	..	..
June 27-8	Bathurst .....	..	394	..	..	..
July 11-12	Emu Plains .....	..	1,233	1,826	9	150	
December 5-6	Emu Plains .....	..	992	113	..	..
		15	4,537	2,642	9	150	

1827.
22 Dec.
Reduction of stock and agricultural establishments.

Stock returns.

Agricultural establishments at Bathurst and Wellington valley.

Return of live stock sold by public auction.

Recapitulation.
Horses 15
Horned Cattle .. 4,537
Sheep 2,642
Goats 9
Pigs 150

1827.
22 Dec.

Return of
live stock at
government
establishments
at Bathurst
and Wellington
valley.

[Enclosure No. 2.]

STATEMENT of Stock remaining at the Government Establishments
at Bathurst and Wellington Valley, 21st December. 1827.

Stations.	Horned Cattle.			Sheep.			Horses.			Pigs.
	Male.	Female.	Total.	Male.	Female.	Total.	Male.	Female.	Total.	
Bathurst	187	18	205	..	..	..	4	..	4	..
Wellington Valley	950	1,744	2,694	79	173	252	11	18	29	134
Total	1,137	1,762	2,899	79	173	252	15	18	33	134

Recapitulation.—Horned Cattle, 2,899 ; Sheep, 252 ; Horses, 33 ; Pigs, 134.

Despatch
acknowledged.

GOVERNOR DARLING TO UNDER SECRETARY HAY.
(Despatch per ship Elisabeth.)

Sir,

Government House, 22d December, 1827.

Being satisfied that such a Measure would in every point of view prove advantageous, I established, in the Month of November, 1826, two Workshops, one of Shoemakers and another of Tailors, intending to report the result of the experiment when satisfied of its Success. In the presence of more important Matters, it escaped my recollection until I received Your Letter, to which I have now the honor to reply.

Manufacture
of shoes and
clothing for
convicts.

I do myself the honor to acknowledge the receipt of your letter of the 1st of December last, transmitting Copy of a Letter from the Ordnance Department, and desiring my Opinion whether Shoes might not be Manufactured by the Convicts for the use of those Prisoners, maintained at the Expense of the Government.

I now beg to enclose the Copy of a Report from the Principal Superintendent of Convicts, under whom these Establishments are placed, which I called for in consequence of your letter, and which will inform you of the progress of these Undertakings.

Mr. Hely states, as his opinion, that these Establishments, according to their present Numbers, are Capable of Manufacturing Monthly

400 Pairs of Shoes, and 960 Suits of Slop Clothing.

Supposing the Number of Prisoners under the various heads, maintained at the Expense of the Government, to amount on an average to 4,500, more than double the number of Shoes which are now made would be required. When necessary, this Establishment shall be increased, and as it was my intention to discontinue the Article of Shoes in the future Requisitions, and substitute the Materials necessary for Manufacturing them, I

take this opportunity of requesting that the Materials for 10,000 pairs, *put up separately*, may be forwarded by an early opportunity. The Materials, being cut and assorted as proposed, are essential to prevent the frauds, which would be practised by any Individual, who might be employed here to perform that part of the Work.

1827.
22 Dec.

Requisition
for materials
for shoes.

The Convicts receive Clothing twice a Year, Consisting of a Jacket or Froek; Shirt; Trowsers; Pair of Shoes; and Hat at each period of Issue. Clothing issued to convicts.

I should propose that the Froeks and half the Number of Trowsers required, that is, 5,000 pair, be in future made up of the Cloth Manufactured in the Government Establishment at Parramatta, and that 5,000 pair of *Duck* Trowsers for the Summer Season be sent out from England.

The Articles to be sent from Home for the Clothing of the Convicts would then be as follows, Vizt. Clothing to be imported.

The Materials for 10,000 Pairs of Shoes to be made up here; 10,000 Shirts; 5,000 Pairs of Duck Trowsers; 5,000 Scotch or Grey Caps of the same quality, one being sufficient for the Year.

I was desirous the Shirts should be made up by the Women in the Factory; but I am satisfied, if attempted at present, it would be attended with disappointment. I must not, however, omit to state that the Yarn, which is Manufactured into Cloth in the Government Weaving Establishment, is all prepared at the Female Factory.

I have, &c.,

RA. DARLING.

[Enclosure.]

MR. F. HELY TO COLONIAL SECRETARY MACLEAY.

Sir, Princ'l Sup't of Convicts Office, 10th October, 1827.

As requested in your Letter of the 8th instant (No. 862), I have the honor to acquaint you, for the information of His Excellency the Governor, that the number of Tailors and Shoemakers at present employed in Hyde Park Barrack is, of the former (30) Thirty, and of the latter (26) Twenty six; but the numbers are occasionally fluctuating, and might be averaged at Twenty Six and twenty three. Report on shoemaking and tailoring establishments.

The Workshops of the Tailors and Shoemakers were established in the beginning of November, 1826; since which period, the Shoes manufactured amount to (2,274) Two thousand, two hundred and seventy four pairs, and the Slop Clothing to (5,217) Five thousand, two hundred and seventeen suits.

In addition to these Articles, the Shoemakers have manufactured (94) Ninety four pairs of Boots for the Mounted Police and Mr. Cunningham's exploring Party; and the Tailors have completed upwards of (100) one Hundred Suits of Clothing

1827.
22 Dec.

Report on
shoemaking
and tailoring
establishments.

(exclusive of Cloaks and Wattle Coats) for the Sydney and Mounted Police.

The number of Pairs of Shoes and Suits of Slop Clothing, already made, averages Monthly

Shoes, 207 Pairs; Slops, 474 Suits;

but these numbers would have been considerably greater, were it not for the delay and difficulty which has hitherto occurred in obtaining the requisite Supplies of materials, and, should no delay take place in making these Issues, I have no doubt that the present Establishments are capable of manufacturing, on the average,

400 Pairs of Shoes and 960 Suits of Slop Clothing Monthly.

It may be proper, in allusion to the number of Men employed in these Establishments, to observe that part of them are not capable of doing the average portion of Work usually performed by Tradesmen of their class, some of the Shoemakers not making more than four pairs of Shoes a Week; and, with regard to the quantity of Work performed, the frequent absence of Individuals from time to time in Watch Houses, before the Police, in Hospital, etc., besides the delays which occur in the making up of Boots and Police Clothing, will sufficiently account for any deficiency which may occasionally appear.

I have, &c.,

FREDK. A. HELY.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Elisabeth.)

Dear Sir,

Sydney, 22d December, 1827.

Arrival of
steel grinding
mills.

I beg to inform you that the Steel Grinding Mills, alluded to in your Letter of the 18th February, 1827, have been received, and will I have no doubt be found useful. I propose trying them in the first instance at the Female Factory, tho' the Experiment may fail in that Establishment, as the Women from the great encrease of numbers are not at present so orderly as they have hitherto been.

I remain, &c.,

RA. DARLING.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 130, per ship Elisabeth.)

23 Dec.

My Lord,

Government House, 23rd December, 1827.

Despatch
acknowledged.

I do myself the honor to acknowledge the receipt of Earl Bathurst's Despatch of the 4th of December last, No. 100, on the

Subject of the Surveyor General's Department, to which I shall reply under the several heads, as therein referred to.

1827.
23 Dec.

1st. *Assistant Surveyors.* The four Assistant Surveyors and two Draughtsmen have arrived (Mr. Hallen, as reported in my Despatch No. 127/1827, having been placed in the Engineer's Department), and the Salaries of £200 a year, which have been assigned to these Individuals, will be issued. But as the Assistant Surveyors have always received an Allowance of £50 a year to enable them to provide Lodgings, and Forage for a Horse when employed in the Field, I have felt it necessary to extend those allowances to the persons in question, being satisfied the object which Earl Bathurst had in view of placing them, as His Lordship states, *above temptation* would not be accomplished by confining their Emoluments to a Salary of £200 a year.

Salary and allowances for assistant surveyors.

2nd. *Surveyor General.* It is directed that Mr. Oxley's Salary, relinquishing his Claim to Fees according to the general principle, shall not exceed £800 a year. If I might be permitted to state my opinion on this point, I would observe that a Salary of this Amount would be as inadequate to Mr. Oxley's Services, which have been arduous and important (the exertions he has undergone having brought him to the brink of the Grave), as to the Station of the Surveyor General in this Government. I have had the honor of stating in a former Letter that, in my opinion from the nature of this Government, the situation of Surveyor General is second only to that of the Colonial Secretary; and I must think, from the experience I have had, that the Salary now proposed is totally inadequate. It will be seen by the Report on the Salaries of the several Departments, which accompanied my Despatch No. 48 of the present Year, that the average of Mr. Oxley's Fees for the last five Years was £1,434 4s., and that his Salary and Allowance for Rations amounted to £442 15s., making an aggregate of nearly £1,900. I am, therefore, persuaded Your Lordship would not consider it just to reduce his income to so small a Sum as £800, when, if the System under which Mr. Oxley received his appointment were to be continued, it would from the encreased demand for Land be raised to an almost indefinite Amount.

Salary of surveyor-general.

3d. I have already had the honor of reporting that Mr. Rodd has retired from the Service, and Mr. Harper has been removed with an allowance of Six Shillings Sterling a day, as directed by Earl Bathurst.

Removal of J. Rodd and W. Harper.

4th. The Communications I have had the honor to make will inform Your Lordship of Mr. Dangar's Suspension and the particulars of his case.

Suspension of H. Dangar.

1827.
23 Dec.

5th. Mr. Cavenagh was not qualified as a Surveyor, and was employed in the office as a Clerk. He has lately retired from the Service.

Salaries of
surveyors.

6th. Messrs. Hoddle and Richards both receive a Salary of £200 a year, as directed by Earl Bathurst, with the usual Allowances on Account of Lodgings and Forage.

7th. Messrs. Finch and Ralfe continue to receive Salaries of £250 each, with the usual Allowances as above.

Return of
department.

8th. I now do myself the honor to transmit for Your Lordship's information a Return of the Surveyor General's Department, with the Salaries and Allowances received by each Individual.

Officers
appointed.

9th. Messrs. Bowen, Dixon, Florance and White were Appointed from Necessity, previous to the arrival of the Assistant Surveyors recently sent from England, and are only sufficient to fill up the Vacancies occasioned by the retirement of Messrs. Harper, Dangar, Rodd and Cavenagh.

House rent for
T. L. Mitchell.

Your Lordship will perceive that I have allowed Major Mitchell, the Deputy Surveyor General, £100 a year on account of House Rent. It appeared to me, in the absence of Instructions on this head, that he could not receive a Smaller Allowance, as the Assistant Surveyors are allowed £50, and the Field Officers in this Command £100, with whom he must be considered to rank.

Mr. Bowen, respecting whom I have written specially, is I find an acquisition to the Service; and I shall be glad to make other arrangements for his employment, whenever he can be spared from the Survey Department.

I have, &c.,
RA. DARLING.

[Enclosure.]

Return of
department
of surveyor-
general.

RETURN of the Department of the Surveyor General of New South Wales on the 29th December, 1827.

[*This was a tabular statement, which detailed the following:—*]

The Surveyor General, John Oxley, had a salary of £432 15s. per annum and a free residence.

The Deputy Surveyor General, T. L. Mitchell, salary £500, and allowances of £100 and £45 12s. 6d. in lieu of quarters and forage.

The assistant surveyors were James Ralfe, Heneage Finch, Robert Hoddle, J. B. Richards, Philip Elliott, Peter Ogilvie, John Abbott, W. R. Govett, T. Thompson, G. M. C. Bowen, Robert Dixon, G. B. White, and Thos. Florance. The salary of the first two was £250 per annum, of the remainder £200. All received £50 and £45 12s. 6d. in lieu of quarters and forage.

Three draftsmen, J. A. Jackson, E. J. H. Knapp, and John Brown, received £150, and one, Peter Le Bemi, £100 per annum.

Two clerks, Henry Halloran and Henry White, received £60 per annum.

1827.
23 Dec.

The average of Mr. Oxley's fees for the last five years was £1,434 4s. 0d.

GOVERNOR DARLING TO VISCOUNT GODERICH. •

(Despatch No. 131. per ship Elisabeth.)

My Lord, Government House, 24th December, 1827.

24 Dec.

I have the honor to acknowledge the receipt of Your Lordship's Despatch, No. 32 of the 19th of July last, authorizing me to withdraw the Troops and Persons employed to establish a Settlement at Western Port, in the event of Mr. Hovell's report not proving more favorable than that which Captain Wetherall had made.

Withdrawal of
establishment
from Western
port.

Your Lordship will have perceived, by my Despatch of the 6th of April last, Marked "Separate," that nothing could have been less satisfactory than the information obtained from Mr. Hovell; and, as I am satisfied that no useful purpose could be answered, while inconvenience and Expense would be occasioned by Continuing that Settlement, it is my intention, in pursuance of Your Lordship's Instructions, to take steps for immediately abandoning it.

It appears to me that *Western Port* (which from its local Situation appears to have been very incorrectly named, being on the South Coast, and several degrees nearer the Eastern than the Western Boundary of New Holland) can only be useful when the Settlement of the Colony is so far extended to the Southward (which cannot be the case for a very considerable period of time) as to render it desirable to have a post for the introduction of Supplies for the Settlers in that neighbourhood, and the exportation of their Produce, instead of being subjected to the necessity of forwarding them overland to Sydney.

Probable use of
Western port.

While on this Subject, I avail myself of the opportunity of stating that King George's Sound is still more inconveniently situated with reference to the Seat of Government than Western Port. The Communication, which is always tedious, is often difficult and uncertain, and the place itself a barren Waste, totally unavailable for any purpose of Agriculture; retaining it is, therefore, entirely a question of policy, and Your Lordship can alone determine whether the object of preventing the occupation of it by any other Power is of sufficient importance to induce its being continued on such a Contingency.

Objections to
settlement at
King George's
sound.

I have, &c.,

RA. DARLING.

1827.
26 Dec.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 21, per ship Mermaid; acknowledged by Governor Darling, 30th July, 1828.)

Sir, Downing Street, 26 Decr., 1827.

Concessions to
officers of navy
and marines as
settlers.

It having been deemed expedient to extend to Officers of the Royal Navy and Marines the advantages, which have been held out to Officers of the Army, who may be desirous of proceeding as Settlers to New South Wales and Van Diemen's Land, I transmit to you herewith a copy of a Circular, which His Royal Highness The Lord High Admiral has issued for the information of Officers belonging to the Naval branch of the Service; and I am to desire that you will carry into effect the Regulations as therein contained.

I have, &c.,

W. HUSKISSON.

[Enclosure.]

[A copy of this circular is not available.]

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 22, per ship Mermaid; acknowledged by Governor Darling, 30th July, 1828.)

Sir, Downing Street, 26 December, 1827.

Limitation of
governor's
power of
expenditure.

I have the honor to acknowledge the receipt of your dispatch, No. 26 dated the 16th of February last, stating the inconveniences, which you anticipate will result from the restriction to £200, which the Lords Commissioners of His Majesty's Treasury had imposed upon all expenses incurred in the Colony without a previous authority from this Country. I have deemed it expedient to refer your observations for the consideration of their Lordships, and you will perceive, by the enclosed copy of the reply which has been received, the modification which they have sanctioned in favor of expenses, which may be incurred for what may properly be termed Repairs, but beyond which they do not think it advisable to alter the Instructions, conveyed to you in Lord Bathurst's dispatch of the 11th August, 1826.

I have, &c.,

W. HUSKISSON.

[Enclosure.]

J. PLANTA TO UNDER SECRETARY STANLEY.

Sir, Treasury Chambers, 27th November, 1827.

The Lords Commissioners of His Majesty's Treasury having had under consideration Mr. Hay's Letter of the 24th of July last, enclosing the copy of a Letter from Lieut. General

Darling in reference to the Instructions, which he has received from this Board for keeping the accounts of the Revenue and Expenditure of the Colony under His Government, I am commanded to acquaint you, for the Information of Mr. Secretary Huskisson, that My Lords are of opinion that it would not be expedient to alter the Instructions at present in force with respect to the limit of Expence, which the Governor of New South Wales is prohibited from incurring without previous sanction, except indeed such expence is incurred for what may properly be termed repairs. With respect to repairs, My Lords would certainly hold the Governor justified in directing them to be executed, notwithstanding the cost might exceed £200, if it can be shewn that they could not have been earlier estimated, and if it can be stated that a larger Expence would be necessarily incurred by deferring the Work.

1827.
26 Dec.

Limitation of
governor's
power of
expenditure.

I am, &c.,

JOSEPH PLANTA, JR.

UNDER SECRETARY STANLEY TO GOVERNOR DARLING.

(Received per John Wood on 10th January, 1829.)

Sir,

Downing Street, 26 Dec., 1827.

His Royal Highness the Lord High Admiral having permitted Lieut. John Wood (B) to proceed as a Settler to New South Wales, I am directed by Mr. Secretary Huskisson to desire that you will make to this Officer a Grant of Land according to the Provisions of the Admiralty Circular* of the 11th August last. I enclose herewith the copy of a letter from the Secretary of the Admiralty, by which you will perceive what have been the Services of this Officer. I have, &c.,

Recommendation of
J. Wood as
naval settler.

E. G. STANLEY.

[Enclosure.]

SECRETARY BARROW TO UNDER SECRETARY STANLEY.

Sir,

Admiralty Office, 11th Dec., 1827.

His Royal Highness the Lord High Admiral having had under his consideration an application from Lieut. John Wood (B) relating to his application for a Grant of Land in New South Wales or Van Diemen's Land, I have it in command to acquaint you for Mr. Secretary Huskisson's information that His Royal Highness has no objection to this indulgence being granted to Lieut. John Wood (B).

It appears that Lieut. Wood first entered His Majesty's Naval Service in the Diomedé on 16th May, 1805.

Services of
J. Wood.

I am, &c.,

JOHN BARROW.

* Note 142.

1827.
26 Dec.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 132, per ship Elisabeth.)

My Lord, Government House, 26th December, 1827.

Appointment of
stipendiary
magistrates.

I have the honor to acknowledge the receipt of Your Lordship's Despatch of the 20th of June last, No. 15, respecting the appointment of four additional Stipendiary Magistrates, and the Allowances of five Shillings a day granted to certain Military Officers, employed as Magistrates at remote Stations, to cover the Contingent Expences to which these Gentlemen are subjected in the performance of their Magisterial Duties.

I can assure Your Lordship the appointment of additional Stipendiary Magistrates was not determined on without the fullest Conviction of the expediency of the Measure. Though in general the Magistrates are very well disposed to lend their aid when called on, it is hardly to be expected that Individuals, whose time is occupied in attending to their private concerns, should devote it exclusively to the public Service. The Nature of this population renders it necessary in certain Districts that a Magistrate should always be on the spot, and this could only be effected by the Appointment of persons specially for the purpose.

Stations for
magistrates.

In my Despatch, No. 94 of the 20th of November, 1826, I mentioned

Liverpool, Newcastle, Bathurst, and Penrith,

as Stations for Stipendiary Magistrates. But, circumstances appearing to render it advisable to establish a Magistrate at Campbell Town rather than Liverpool, the former being 13 Miles further from Sydney, and the neighbourhood more populous, I had the honor of reporting accordingly to Your Lordship in my Despatch, No. 112 of the 2d of November last.

The Appointments of Stipendiary Magistrates, which have taken place since my first communication on this Subject, are one at

Newcastle, Campbell Town, and Bathurst.

I have not yet appointed one for Penrith; and I shall delay doing so, as I have done in the other Cases, until it becomes absolutely necessary.

Allowances
to military
officers.

I regret not having expressed myself more clearly in my Despatch of November, 1826, No. 94, as I had no intention of granting the Officers of the Military Service, without Your Lordship's Sanction, more than five shillings a day, which sum only has been issued to them. And I was satisfied, had it even been encreased as recommended to 7s. 6d., that it would have

been not only more convenient but more economical than allowing them to charge for Travelling and other Contingent Expenses. At present, there are only one or two so employed, and the whole Allowance they receive is five shillings a day.

I have, &c.,

RA. DARLING.

1827.
26 Dec.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 23, per ship Mermaid; acknowledged by Governor Darling, 30th July, 1828.)

Sir,

Downing Street, 27 December, 1827.

27 Dec.

I have the honor to acknowledge the receipt of your dispatch, No. 42 dated the 14th March last, transmitting the report of a Board of Officers, whom you had assembled to frame a Statement of Prices, according to which all Government Work should in future be estimated; and in reply I have to convey to you my approval of the list of Prices in question for that purpose.

Approval of
valuations for
public works.

I have, &c.,

W. HUSKISSON.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch marked "Circular," per ship Mermaid; acknowledged by Governor Darling, 12th November, 1828.)

Sir,

Downing Street, 29 Dec., 1827.

29 Dec.

His Majesty having thought fit to appoint a Commission of Inquiry into the Revenue of the Post Office, it has been considered desirable that the Commission should have an opportunity of considering the Laws and regulations, under which Revenue may be derived by your Government for the conveyance of Letters from this Country to New South Wales, and from that Colony to this Country; and I have therefore to desire that you will take an early opportunity of transmitting to me the fullest information on the subject.

Report required
re revenue of
post office.

I am, &c.,

W. HUSKISSON.

UNDER SECRETARY STANLEY TO GOVERNOR DARLING.

(Despatch per ship Mermaid; acknowledged by Governor Darling, 14th July, 1828.)

Sir,

Downing Street, 30 Decr., 1827.

30 Dec.

A letter having been received from the Inspector of Seamen's Wills at the Navy Pay Office, requesting to be informed as to the fate of a Seaman, named "James Hill," who appears

Report required
re J. Hill.

1827.
30 Dec.
Report required
re J. Hill.

to have been discharged from H.M.S. Volage to the Colonial Hospital at Sydney, New South Wales, on the 21st of December, 1826. I am directed by Mr. Secretary Huskisson to desire that you will cause enquiries to be made respecting this person, and report to me the result.

I have, &c.,

E. G. STANLEY.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch marked "Circular," per ship Phoenix; acknowledged by Governor Darling, 30th July, 1828.)

31 Dec.

Secrecy of
official
correspondence
to be observed.

Sir,

Downing Street, 31 Dec., 1827.

I have had occasion to observe with much surprise that, in numerous instances to which I shall not now allude, persons residing in H.M.'s Foreign Possessions have succeeded in obtaining officially, and by other means which I cannot imagine, copies of despatches or instructions, which H.M.'s Secretary of State has addressed to the Officers, administering the Government of the Colonies or Settlements, in which the Persons were residing, who had thus obtained possession of these documents.

Upon this subject, I feel it my duty to acquaint you that I consider the despatches, which the Secretary of State may have occasion to address to you, as intended for your own use exclusively, excepting that, as has already been directed, they are to be filed or preserved for the information of your successor; and you will, therefore, understand that you are not at liberty to allow Copies of them to be taken by any person under any circumstances whatever, unless by desire of the Secretary of State.

I have, &c.,

W. HUSKISSON.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 133, per ship Elisabeth.)

My Lord,

Government House, 31st December, 1827.

Despatches
acknowledged.

I have the honor to acknowledge the receipt of Earl Bathurst's Despatches, Numbered 22 and 28 of the present Year; and I am sorry to state that, after much labour and loss of time, I have found it totally impossible to collect the Materials, which would be necessary to enable me to furnish the information required for the period previous to my arrival. I have stated on a former occasion that, previous to my assuming the Charge of the Government, the assigning of Convicts was left to the Civil Engineer, and it appears to have been effected without reference

Former
practice in
assigning
convicts.

to any particular System or principle. Individuals, as I am informed, addressed themselves to the Engineer, and he complied with their Applications or not, as might be expedient.

1827.
31 Dec.

At present, written applications are made to the Principal Superintendent of Convicts according to a prescribed form (of which I enclose a Copy), who prepares Lists of such Prisoners as from time to time are assignable. These Lists are submitted to the Land Board, whose province it is to examine the applications and apportion the Men to be assigned, And in no instance are they disposed of, until I have approved the Report of the Board and authorised the distribution.

System adopted
in assignment
of convicts.

On the Arrival of Prisoners from England, they are under the present regulations assigned immediately from the Ship, so as to prevent as far as possible the ill effects of an intercourse with the Convicts in Sydney.

I do myself the honor to transmit a Copy of the Regulation, established for the guidance of the Board; but much attention and some Knowledge of the Circumstances of Applicants are necessary to a just distribution, as persons, who require a few Men, apply in most Cases for a large Number, so as to have the better chance of having their real wants supplied. The discovery of this practice led me to direct the Board not to assign more than three Men to any Individual from any one Batch or Cargo, the Australian Company and New Settlers, in first taking possession of their land, being the only exceptions. The gross Number assigned to the Agricultural Company is three Hundred and Ninety Eight.

Convicts
assigned to
A.A. company.

I do myself the honor to forward Abstracts of Applications for Convict Servants from the period of my arrival to the present date, shewing the Number of Men assigned to each Person.

Returns
transmitted.

I also beg leave to enclose two Returns, one of the Number of Convicts "*Employed*" and the other of the Number "*Maintained*" at the Expense of the Government during the Years 1826 and 1827.

I need not point out to Your Lordship that, although the Number Maintained at the Expense of Government appears large, there is very little, if any, power of controlling it. It will be seen in proof of this, by reference to the Enclosures Nos. 4 and 5, that these Lists include:—

Convicts
maintained by
government.

- 1st. Persons necessarily employed by the Public Departments.
- 2nd. Prisoners employed at the several Stock, Agricultural, and other Establishments, now under reduction.
- 3rd. Prisoners employed at the Coal Mines.
- 4th. In introducing Water into Sydney.

1827.
31 Dec.

Convicts
maintained by
government.

5th. Prisoners at the Penal Settlements.

6th. Employed on the Roads in Irons under Judicial Sentence, or with the common Road Parties, having been returned by their Masters for Misconduct.

7th. Prisoners in the Several Jails throughout the Colony.

8th. Patients in the Hospital.

9th. Invalids, Idiots and Lunatics.

In order that the Number of Men retained should not exceed the real wants of Government, it was ordered by the 2d Clause of the regulation above alluded to (Enclosure No. 2) that, whenever there were Ten Men in the Prisoners' Barracks beyond the fixed Establishment of the Several Departments, the Principal Superintendent of Convicts should immediately send a Return of their Names to the Land Board for Assignment; but the influx and changes, which constantly take place, have rendered it impossible to adhere strictly to this rule. In the Prisoners' Barracks at Sydney alone, the average Number of Men, *Received* and *Discharged* in the Course of the Month, amounts to Six Hundred; these fluctuations are occasioned by the Settlers returning their Servants to Government, by Prisoners being received in Numbers from the Jails and Penal Settlements at the expiration of their Sentences, who are necessarily retained until arrangements can be made for their disposal. Besides these, all Convicts, subpoenaed as Witnesses before the Courts, are kept in the Barracks during the Sessions; thus it appears by the Return of Convicts (Enclosure No. 4) that the average Number of Men remaining in Barracks unappropriated has amounted to *Sixty*.

Character of
convicts in
government
service.

It may be proper to observe in this place that the labourers employed by Government are invariably of the very worst description, being Men who have in general been returned by the Settlers as incorrigible.

Public works
to be completed
by contract.

It has been proposed, with a view to diminish the Number of Convicts employed by Government, that all Public Works should be performed by Contract; but I feel assured that it would not be found practicable at present. There are no Master Builders in the Colony of any respectability. The Mechanics are for the most part independent Journeymen, profligate in their habits, without character and without means; and, when Contracts have been entered into, the Government has generally been obliged to advance the Money, to supply a portion of the Materials and the Mechanics, and notwithstanding this has been disappointed.

I am, however, satisfied it is desirable that the System of Contracts should be established, being both beneficial to the

Colony and convenient to the Government; and, having introduced it, I propose proceeding gradually from Undertakings of minor importance to those of greater magnitude.

1827.
31 Dec.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

[This was a copy of the enclosure, which will be found on page 140.]

[Enclosure No. 2.]

GOVERNMENT NOTICE.

27th March, 1826.

As the arrangements, which are now in progress, will probably place at the disposal of Government a Number of Men for assignment, it is requested that the Settlers and Inhabitants, who require Labourers or Servants, will renew their Applications without loss of time according to the prescribed Forms.

Applications
for assigned
servants.

By His Excellency's Command.

ALEXANDER MCLEAY.

GENERAL REGULATIONS for the guidance of the Board, appointed to report on the Applications for Convict Servants and labourers.

Regulations
for the
assignment
of convicts.

1st. Upon the arrival of a Ship with Convicts, the Principal Superintendent shall, as soon as they have been mustered, prepare and lay before the Board a Correct List, classing the Individuals according to their Trades, etc., as likewise a list of the Applications for Servants or labourers, to be made out in the Order in which the Applications have been received. He is also to prepare and submit lists, whenever the Number of disposable Prisoners shall amount to Ten.

2nd. In assigning Convicts, Preference will be given to the Claims of New Settlers, as their being able to proceed in improving or Stocking their Farms must depend upon their receiving the necessary assistance in this respect.

3d. Applications for a particular description of Servant will, as far as Circumstances admit, be complied with. When Mechanics are required, the Board will make out a Separate List, noting the Number which the Applicant has already received from Government.

4th. Labourers, applicable to Husbandry, will be assigned to Settlers in the Country in preference to persons residing in the Towns.

5th. No Convict will be assigned to any Non-Resident, who does not employ a free Steward or Bailiff of good Character, and who must reside on the Farm or Property.

6th. Other Claims being equal, Preference will be given to persons of good Moral Character, who pay due attention to the Conduct of their Servants.

7th. Masters, who frequently return their Servants to Government, will not be supplied with others, until all Applications from less exceptionable Persons are complied with.

8th. No Convict will be assigned to any Person, who shall be known to have let his Servant out for Hire, or to have permitted

1827.
31 Dec.
Regulations
for the
assignment
of convicts.

him to Work out on his own Account, or who may not be in a Condition of Life to Maintain a Servant in a proper Manner, or possess the Means of giving him constant Employment.

10th. No Convict will be assigned as a Servant to a Convict, though holding a Ticket of Leave.

11th. No Convict will be assigned on Arrival to his or her Wife or Husband, or to his or her Relation, or to any person applying for a particular Individual. The ends of Justice would be defeated by such Assignment, and evil consequences could hardly fail to result from it.

This indulgence will be reserved as the reward of good Conduct. When any Prisoner shall have proved himself deserving of it, his claim will be immediately attended to.

12th. The Board will communicate direct with the Principal Superintendent of Convicts on all Matters of Detail connected with this Subject, and he will afford the Board every information.

13th. On such points as the Board may require Instructions, Application is to be made to the Colonial Secretary, who will signify the Governor's Pleasure on the Subject.

14th. The Board will not make known the proposed distribution of the Convicts to be assigned, until their Report shall have been submitted for His Excellency's Consideration, and the necessary directions have been given thereon.

Given under my Hand at Government House, Sydney, this Ninth day of March, 1826.

By His Excellency's Command,
ALEXANDER McLEAY.

[Enclosure No. 3.]

Return of
applications for
and assignments
of convicts.

ABSTRACT of all Applications for and Assignments of Convict Servants.

Year.	1826.	1827.
No. of Applicants	1,115 ..	1,080
No. applied for	5,220 ..	5,042
No. Assigned	2,105 ..	2,393

ADDITIONAL LIST of Assignments of Male Convicts made.

Year,	1826.	1827.
No. of Applicants	245 ..	194
No. Assigned	420 ..	361

[Enclosure No. 4.]

Return of
convicts
employed by
government.

RETURN of the Average Number of Convicts, employed in the several Departments and Establishments of the Government.

1826.	Mechanics, 373; Labourers, 1,577.	General Total, 1,950.
1827.	„ 374; „ 1,575.	„ „ 1,949.

[Enclosure No. 5.]

Return of
convicts
maintained by
government.

RETURN of the Average Number of Convicts Maintained by the Government.

1826, 5,140; 1827, 5,053.

[Enclosures numbered 3 to 5 are summaries only, the details being omitted.]

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 134. per ship Elisabeth; acknowledged by Sir George Murray, 10th September, 1828.)

1827.
31 Dec.

My Lord, Government House, 31st December, 1827.

In pursuance of the 19th Section of An Act of Parliament, passed in the Fourth Year of His Majesty's Reign, Chap. 96, I do myself the honor to transmit Returns of all Sentences, imposed by the Courts of Quarter Sessions during the Year 1827.

Return of sentences imposed at quarter sessions.

I have, &c.,

RA. DARLING.

[Enclosure.]

[*These returns will be found in a volume in series IV.*]

NOTE.

1828.

[*The synopses of letters introducing settlers, transmitting assignments of convicts, and covering miscellaneous papers during the year 1828, will be found on page 1 et seq., volume XIV.*]

Synopses of letters.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 1, per ship Elisabeth.)

My Lord, Government House, 2nd January, 1828.

2 Jan.

In Compliance with Earl Bathurst's Despatch, dated 2nd November, 1826, I do myself the honor to transmit to Your Lordship a Volume, Containing all the Acts and Ordinances, which have been promulgated in this Government during the Year 1827.

Transmission of acts and ordinances.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 2, per ship Elisabeth.)

My Lord, Government House, 3rd January, 1828.

3 Jan.

I have the honor to transmit, agreeably to the Orders contained in Earl Bathurst's Despatch, dated the 22nd August, 1825, No. 17, a list of the Names of those Convicts, who are supposed to have escaped from the Colony during the year 1827; and I have further the honor to inform your Lordship that a regular Series of the Sydney Gazettes for the last half year has been forwarded to the Secretary of State for the Home Department.

Transmission of return of escaped convicts.

I have, &c.,

RA. DARLING.

1828.
3 Jan.

[Enclosure.]

[This return contained the names and particulars of thirty individuals.]

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 3, per ship Elisabeth.)

4 Jan.

My Lord,

Government House, 4th January, 1828.

W. Foster
appointed
commissioner
of court of
requests ;

1st. I have the honor to acquaint Your Lordship that I have appointed Mr. William Foster, temporarily employed as Solicitor General, to act as Commissioner of the Courts of Requests, in the room of Dr. Douglas, to whom I have granted leave to return to England, as reported in my Despatch No. 8 of the 14th Instant.*

Mr. Foster, according to the existing regulations, will receive £400 a year, being a Moiety of the Salary of the Commissioner of the Court of Requests, Dr. Douglas retaining the other Moiety, provided he does not delay his departure beyond a certain period.

and chairman
of bench of
magistrates.

2nd. I further beg leave to report that Mr. Foster has been Nominated Chairman by the Benches of Magistrates, which Situation became Vacant by the Appointment of Mr. Carter to be Sheriff; and he will receive the allowance of £200 a year, the same as his predecessor.

The business of the Quarter Sessions being very extensive and the cases generally requiring that a person of legal information should preside, I was induced to bring Mr. Foster forward, and the Magistrates immediately Nominated him.

I had previously spoken to Mr. Norton, who has been occasionally employed by the Government, but he intimated that the Situation, which is attended with considerable Expense, would not be worth the acceptance of any person, who did not hold some other public Office.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 4, per ship Elisabeth.)

5 Jan.

My Lord,

Government House, 5th January, 1828.

Appointment
of government
astronomer.

I have the honor to acquaint your lordship that I have nominated Mr. Rumker, Government Astronomer,† with a Salary of £300 a year from the date of his taking charge of the Observatory, to which he was appointed at the recommendation of the Council, some time after my Arrival. The Instruments purchased from Sir Thomas Brisbane are Valuable, and it became necessary to their preservation to place them under the care of a person acquainted with their use and purposes, and Mr. Rumker

* Note 154. † Note 155.

was the only Individual in the Colony qualified for the charge. I have explained to Mr. Rumker that the results of his Observations must be reserved for the Royal Society, and that they are to be forwarded through me to your lordship; and I shall endeavour to see that this is attended to.

1828.
5 Jan.

I beg to state to your lordship that the Council were of opinion that Mr. Rumker's Salary should at least be £400 a year, as any thing short of that sum would be an inadequate remuneration to a Seientife Person for his time and Services. But I proposed allowing him £300, until I should be informed of your lordship's pleasure in this respect.

Salary of
C. S. Rumker.

The Council appeared desirous that Mr. Rumker should be placed on the same footing as the Astronomer at the Cape. But, as no precise information could be obtained of the extent of that establishment, I conceived it would be better to refer the Matter for your lordship's decision, and I beg to be honored with your lordship's Commands accordingly.

I further beg to state that I have been under the necessity of Authorizing the addition of two Small Rooms to the Observatory* for the personal accommodation of Mr. Rumker. He formerly resided with Sir Thomas Brisbane, and since his assuming the Charge of the Observatory has certainly suffered much personal inconvenience, to which he has hitherto submitted very cheerfully. I, therefore, request that this Expence also, which will be inconsiderable, may receive your lordship's Sanction.

Additions to
observatory.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 5, per ship Elisabeth; acknowledged by Sir George Murray, 9th September, 1828.)

My Lord, Government House, 7th January, 1828.

7 Jan.

I do myself the honor to transmit for your Lordship's consideration Copy of a Correspondence, which has passed between the Chief Justice and myself, on the subject of the discontinuance under present circumstances of the Office of Master of the Supreme Court.

Correspondence
re master of
supreme court.

I had been previously informed that the Situation was not essential, and had intended to have consulted the Chief Justice as to the Validity of another Arrangement for the performance of the Duties of Master, as soon as circumstances should permit of removing Mr. Carter to the Office of Sheriff.

The receipt of the Chief Justice's letter No. 1, rendered this unnecessary; and, as I conclude there is no legal objection to the

* Note 156.

1828.
7 Jan.

Alterations
in salaries.

arrangement proposed by Mr. Forbes, and a saving to the amount of £300 a year has been effected by it, I have accordingly approved of its being carried into effect.

I have, therefore, to request your Lordship will be pleased to authorize the Augmentation of the Salary of the Chief Clerk from £380 to £450 a year, and of the assistant Clerk (in which Situation Mr. Francis Stephen, Son of Mr. Justice Stephen, has been placed) from £200 to £300 a year. I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

Sir,

Sydney, 15th December, 1827.

Proposals for
reorganisation
of establishment
of supreme
court.

I have the honor to acknowledge the receipt of a Copy of a Despatch, transmitted for my information by Your Excellency's desire, from the Secretary of State for the Colonies, respecting the division of the duties of the Supreme Court between Mr. Justice Stephen and myself, and to express our mutual satisfaction at finding that our arrangements have met with the approbation of His Majesty.

In a Letter, which I had the honor to address to Your Excellency on the 28th September last, relative to the contemplated appointment of a Prothonotary in the Supreme Court, I intimated my intention, as soon as the issue of the New Bill* should be known, to bring the state of the Ministerial Officers of the Court under your Notice, with a view to its being submitted to the consideration of His Majesty's Government. Since I wrote that Letter, I have received a Copy of the New Bill, printed by order of the House of Commons; and, as it is probable the Bill will pass at the ensuing Session of Parliament without any material alteration, I now beg leave to recal the attention of Your Excellency to the subject of my Letter of September, and request that a Copy of this communication may be laid before the Secretary of State.

The New South Wales Act (4 Geo. 4, Chap. 96) provided for the Appointment of the Ministerial Officers of the Supreme Court, in such manner as His Majesty should direct; and His Majesty, in the Charter creating the Courts, was pleased to order that there should be a Registrar, Prothonotary, Master, and Keeper of Records, and such other Officers as the Chief Justice should think necessary for conducting the Business of the Court. The Ministerial Officers consist at present of the Registrar, the Master, and three Clerks, the several Duties of whom are very unequally divided, as the following Statement will shew.

The Registrar signs all common Process, and attends at the Office of the Supreme Court, and he is always willing to do what

* Note 151.

he may be required. But I have thought that it was not the intention of His Majesty's Government to place Mr. Mills in the Situation of a Clerk, and therefore I have never called upon him to perform any of the mere Clerical Acts of the Court. In addition to his other duties, I have placed under his Charge the Curatorship of intestate Estates, an important and encreasing branch of the business of the Court, which has grown up under the very salutary provisions, contained in the tenth Section* of the New South Wales Act; as the Office of the Supreme Court is appointed for the Registration of all conveyances of Estates in the Colony, and His Majesty has desired that all future Grants of Land shall be recorded there, I am of opinion that this Office may be conveniently retained, subject to certain modifications of its duties, and, assuming them to be skilfully performed, that the Office itself will not be overpaid by the present Salary of eight hundred Pounds per annum.

1828.
7 Jan.

Proposals for
reorganisation
of establishment
of supreme
court.

The Master has comparatively very few duties, properly official, to perform in the Supreme Court. In the course of three Years and a half, since the opening of the Court, no more than eight cases have been referred to him, and those upon simple matters of fact. In an early stage of Society, there is comparatively but little occasion for resorting to a Court of Equity. The Mass of Business in this Colony is done at the Criminal and Civil Sittings of the Court. With these, the Master has nothing to do except tax Costs, a duty which, under our simple rules of practice, does not require particular skill, gives no trouble, and occupies very little time. In addition to his official duties, I have required the Master to take examinations *de bene esse*, in the manner directed by the Rules of Practice. Yet these united duties do not create sufficient occupation for a Master, and leave the office in a great measure a sinecure; the Salary annexed to it is Six Hundred Pounds per annum. Should a vacancy occur in this office, I should recommend it to be discontinued, and the duties attached to it to be transferred.

The Chief Clerk receives a Salary, in lieu of all Fees, of three Hundred and eighty Pounds a Year. He attends the Court at all the trials, arraigns the Prisoners, takes Minutes of the proceedings, and enters them of Record. He Superintends the whole of the duties of the office of the Court, exercising at once the various jurisdictions of all the Kings Courts at Westminster and Doctors Commons. This Officer performs more difficult and laborious work at a less price than occurs in any single instance, I believe, in the whole Colony; and what renders his case more peculiarly hard is that there is not another person in the Colony at this moment competent to Supply his place.

* Note 157.

1828.

7 Jan.

Proposals for
reorganisation
of establishment
of supreme
court.

The second Clerk keeps the "Clerks Book," as directed by the tenth Article of the Rules of practice, and enters all the Registrations of Deeds and Conveyances of Land, agreeably to an act of the Legislature of the Colony. He also makes Abstracts of the issues of such cases as are of a special nature for the use of the Judges at the trial, and performs all other Acts during the attendance of the Chief Clerk in Court. He is of necessity always present in the Office of the Supreme Court, and his Situation is one that can only be competently filled by a Person, previously initiated in Law proceedings; the Salary of this Office is two Hundred Pounds a Year, a Sum by no means sufficient to induce any competent person to retain it except as a resting place for a year or two.

The third Clerk is only employed in making office Copies of pleadings, etc., and has a Salary of one Hundred a Year. He is assisted by the Cryer at a yearly Salary of fifty pounds.

From this short review of the present state of the Ministerial Officers of the Supreme Court, it will be seen that the duties are very unequally divided, and the Salaries are not apportioned according to the Services performed. In proposing a remedy, I would beg leave to suggest the entire remodelling of the Offices themselves; and, in doing this, I would create them with reference to the business of the Court, as it is transacted in this Colony, in preference to retaining the Names of Offices, as they exist in England, and which have only a very remote analogy to the operative duties of the Supreme Court. There is besides an appearance of hardship in appointing a Person to an Office of known duties at home, and his being called upon, after his arrival in the Colony, to perform other and different duties; the almost necessary consequence is that such an Office has a tendency to become a sinecure; and other Persons are appointed to fulfil the actual duties of the Court in subordinate Situations, and at very inadequate Salaries. I venture to propose an entire omission of the titles used in the Charter,* and, instead thereof, to appoint officers by the Name of Chief Clerk and Assistant Clerks in the Supreme Court, leaving their respective duties to be described generally in their appointments, and allowing the numbers to be enumerated as the exigencies of the Colony may require. It would be superfluous in this place to enumerate the respective duties of the Clerks; these must necessarily be a matter of mere detail, and should be left in some degree to the adjustment of the Court. I shall take an opportunity of submitting my opinion upon them on a future occasion, when I propose offering some remarks for the consideration of his Majesty's Government upon the present Charter of the administration of Justice.

* Note 158.

I need not urge the very great advantages, which must result to the Public, from having Persons skilled in the performance of their official duties. The practice of every Court is in a great measure in the keeping of its Officers, and nothing is more common than for the Judges in England to refer to them upon points of Form. In this Colony, our Rules are more summary; but they require time to learn and skill to apply; and no part of my office has been more troublesome than the necessity, which has existed, of being perpetually called off from the consideration of some difficult question to expound a point of mere practice in the office; but this inconvenience will be perpetual, unless we are provided with inducements sufficient to retain in the Court such Clerks, as have been long enough in office to have acquired practical facility in performing its duties.

To accomplish this object, I think that the principle of succession might be very advantageously introduced, which, while it holds out the prospect of increased Salary, will also operate as an inducement to acquire a correct knowledge of the entire practice of the Office, as a necessary qualification. In illustration of the force of these observations, I must again call Your Excellency's attention to the case of Mr. Gurner, the Chief Clerk. He is, I know, balancing between going and remaining in the Supreme Court, and I have no hesitation in saying that, if he should quit, the business of the Colony must stand still, until I should have instructed some other Person in the Rules and practice of the Supreme Court sufficiently to enable him to direct the multifarious duties of the office. I know that there is a present remedy in the increase of his Salary, but I have felt a delicacy in recommending it, from considering the actual Expense to which the Public is already put for Ministerial Officers of the Supreme Court.

I have, &c.,

FRANCIS FORBES, Chief Justice, New South Wales.

[Enclosure No. 2.]

GOVERNOR DARLING TO CHIEF JUSTICE FORBES.

Sir,

Government House, 19th December, 1827.

I addressed a Letter to you this morning, which would in some respects have been unnecessary, had I perused yours of the 15th instant, which I have not had time to do until this moment. On receiving that Letter, I was led to suppose from the first Paragraph that it related solely to the division of the Duties of the Supreme Court between yourself and Mr. Justice Stephen, and, as that matter appeared to have been disposed of,

1828.
7 Jan.

Proposals for
reorganisation
of establishment
of supreme
court.

Letter
acknowledged.

1828.
7 Jan.

Proposed
abolition of
office of master.

I laid the Letter aside until I should have dispatched the business, I had then on hand. I have now to request, as you are of opinion the Situation of Master can be dispensed with, that you would inform me in what manner and under what arrangement you would propose the duties of that Office should be performed.

I have, &c.,

RA. DARLING.

[Enclosure No. 3.]

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

Sir,

Sydney, 20th December, 1827.

I have the honor to acknowledge the receipt of two letters from Your Excellency of yesterday's date. As the subject of the first is embraced more particularly in the second, I beg leave, in reply thereto, to inform Your Excellency that I have consulted with Mr. Justice Stephen, and he agrees with me in the following arrangement; that we should take at Chambers such matters as may, by the practice of the Court of Chancery, be referrible to the Master; that the Chief Clerk should tax Bills of Costs and the second Clerk should take Examinations *de bene esse*, unless in special Cases in which we may deem it better to have such Examinations taken before one of us at Chambers.

As by this arrangement there will be a saving of Expense in the Judicial Department to the amount of Six Hundred Pounds per annum, I shall have to propose a moderate encrease to the Salaries of the first and second Clerk, until the pleasure of His Majesty's Government may be known. In appointing a successor to Mr. C. Moore, it is my wish to fulfil the recommendation of Mr. Hay in favor of Mr. Francis Stephen for an Appointment in the Supreme Court. Independently of his general qualifications, he was intended for the legal profession, and will readily acquire that peculiar knowledge which is essential to the business of the office.

I have, &c.,

FRANCIS FORBES.

[Enclosure No. 4.]

GOVERNOR DARLING TO CHIEF JUSTICE FORBES.

Sir,

Government House, 22nd December, 1827.

I have the honor to acknowledge the receipt of your Letter of the 20th, and to acquaint you that I shall very willingly give effect to the arrangements proposed, and request you will specify the Amount of Salary, which you would recommend for the first and second Clerk under the circumstances stated.

I have, &c.,

RA. DARLING.

Proposed
distribution
of duties of
master.

Increased
salaries for
clerks.

Appointment of
F. Stephen.

Recommend-
ations approved.

[Enclosure No. 5.]

1828.
7 Jan.

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

Sir, Sydney, 28th December, 1827.

I have the honor to acknowledge your Excellency's Letter of the 22nd instant, and I beg leave to express my satisfaction that the arrangement recommended by me has met the views of Your Excellency. I am of opinion that the Salary of the Chief Clerk should be increased to four hundred and fifty Pounds per Annum, and that of the second Clerk to three hundred Pounds. In recommending these Salaries, I have endeavoured to fix the amount with a view to Economy, as well as to a fair remuneration for the nature and extent of the Services performed and the responsibility of the Offices held. I have, &c.,

Proposed
increase of
salaries.

FRANCIS FORBES.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(A circular despatch per ship Mermaid.)

Sir, Downing Street, 8th January, 1828.

8 Jan.

Applications having been frequently made to the Secretary of State by Colonial Officers for a renewal of leave of absence, originally obtained from the Governor of the respective Colonies, the expediency or in expediency of granting which renewed leave could not be known to the Secretary of State without previous reference to the Governor, and such application having nevertheless been generally made at a time when the original leave was on the point of expiring, and when therefore the Applicant could not have reached the Colony in time without a renewal of his leave, I am to desire that you will make known to such Officers, as may in future obtain leave of absence from you, that, if they should seek a prolongation of such leave from the Secretary of State, they will be expected either to produce your written authority, or to apply, at such a period before the termination of their original leave, as will enable the Secretary of State to obtain the opinion of the Governor before he grants or refuses the application.

Applications
for extended
leave of
absence.

I have, &c.,

W. HUSKISSON.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 6, per ship Elisabeth.)

My Lord, Government House, 8th January, 1828.

I have the honor to acknowledge the receipt of your Lordship's Despatch, dated the 30th July last, No. 41, on the Subject of the Revenue and Expenditure of this Government. This Communication having put me more fully in possession of your lordship's sentiments on the above Subject, I have availed myself

Despatch
acknowledged.

1828.
8 Jan.

of the opportunity, which has been afforded by an Examination into the Financial Arrangements of the Government on the Close of the Year 1827, to adjust the Expenditure in a Manner more Conformable to your lordship's views than I had hitherto been enabled.

Abstracts of
revenue and
expenditure.

I accordingly do myself the honor to enclose for your lordship's information three Statements or Abstracts, as follows, Vizt.

No. 1. Abstract of the Colonial Revenue and Extraordinary Resources from the 1st of January to the 31st December, 1827.

No. 2. Abstract of the Estimated Annual Expences of the Departments and Establishments chargeable to the Colonial Revenue.

No. 3. Abstract of the Estimated Annual Expences, incurred for the Maintenance of Convicts and the Establishments connected therewith, being chargeable to the Home Government and paid by the Deputy Commissary General.

Alterations in
estimated
expenditure.

It will be observed that the Expences of most of the public Establishments are rated higher than in the Enclosure No. 1, which was transmitted with my Despatch, No. 99 of the 5th October last. This has arisen from the difficulty of fixing the Establishments of the Several Departments, as the Changes, which necessarily take place in endeavouring to simplify the general Arrangements and place the Departments at the same time on an efficient footing, render it impossible to adhere strictly to my particular scale at the present Moment. This difficulty will, however, cease, as soon as the System has been modified so as to insure the several Departments working together, without interfering with each other.

Difficulties in
reorganisation.

Your Lordship will not fail to observe that, in this Government, these arrangements must be attended with more than ordinary inconvenience, the same Establishment being in many cases applicable to the Colonial, Convict, and Military Services. I trust your Lordship will be assured that my next object to placing the Establishments on an efficient footing is to effect it in the most economical manner that circumstances will consistently permit.

Expenditure
chargeable to
English
treasury.

The Expences chargeable to the Home Government, according to Enclosure No. 3, appear much larger in Amount than was stated in my former Despatch. But it will be observed that the whole Expense of the Police, the Veteran Companies, and Company of the Staff Corps, together with the supposed cost of Stores sent out from England, are now included under the above Head, and are proposed to be defrayed through the Commissariat.

According to the present Arrangement, the difference between the fixed Expenditure, Chargeable to the Colonial Government,

and the ordinary Revenue is about £7,000. But then there are various objects, which remain to be provided for:—Buildings, Repairs, and other Extraordinary and Miscellaneous Expenses. It is true the Monies, on account of Land purchased and of Quit Rents, which become payable this Year, and arrears due to Government on other Accounts, appear very considerable, as will be seen by the accompanying Statement. But I now understand, from the great scarcity of Money, and the indulgence which People in general seem from long established Usage to think they have a sort of right to receive from the Government, that a very small part only of this large Sum is likely to be collected during the present Year.

It appearing by my Despatch, No. 99 of the 5th of October last, that the Sum Chargeable to the Home Government (exclusive of the Stores sent out from England) was £93,484, it is necessary to explain whence the difference has arisen between the former and the present Statement, in order to shew that no Material additional Expense is intended to be incurred; and I, therefore, subjoin the following Statement, Vizt.

	£
1st. Amount of Expenses chargeable to the Home Government according to my Despatch, No. 99, dated 5th October, 1827	93,484
2nd. Probable cost of Stores sent out from England not included in former Statement	20,000
3d. Difference of Cost of Rations for Convicts, calculated according to the contracts recently entered into	4,200
4th. Probable cost of the Article to be manufactured here and made up into Frocks and Trowsers, as part of Clothing for the Convicts, as explained in my letter to Mr. Hay, dated the 22nd December last	1,100
5th. Second Moiety of the Expense of the Police Establishment, one Moiety only having been included in the former Statement*	11,000
6th. Expenses of the Two Veteran Companies employed in this Government†	5,700
7th. Ditto of the Company of the Royal Staff Corps	3,360
	<hr/> £138,844

1828.
3 Jan.
Margin between
revenue and
expenditure.

Explanation of
increase of
expenditure
charged to
English
treasury.

Thus it appears that, deducting the additional Expense of Rations, the 3rd Item, as stated above, amounting to £4,200, which is unavoidable, and the Estimated Cost of the Articles specified in the 4th Item £1,100, which will save the Expense of Clothing for the Convicts to be sent out from England to at least that amount, the excess of the present Estimate of the Expenses chargeable to the Home Government, with reference to that which accompanied my former Despatch on this Subject, is only about £1,012, the difference being accounted for, as stated above, by the introduction of Charges brought from the estimate of Expenditure chargeable to the Colony, and the probable Cost of the Stores to be sent out from England. I have, &c.,

RA. DARLING.

* *Marginal note.*—The whole Expense of the Police being directed by the Secretary of State's Despatch of 30th July, 1827, No. 41, to be charged under this Head.

† *Marginal note.*—The Expense of these Companies is charged under this Head, not being included with the Expenses chargeable to the *Colonial Revenue* in the Secretary of State's Despatch, No. 41, dated 30th July, 1827.

1828.
3 Jan.
Statement of
revenue for
year 1827.

[Enclosure No. 1.]

STATEMENT of the Colonial Revenues of New South Wales for the Year ended 31st December, 1827, distinguishing the Amount for each Quarter.

Quarter ended on	Ordinary Revenue.			Extraordinary* Revenue.			Totals.		
	£	s.	d.	£	s.	d.	£	s.	d.
The 31st March	16,039	5	3½	84	17	8	16,124	2	11½
„ 30th June.....	15,829	8	4	176	15	7½	16,006	3	11½
„ 30th September	20,854	2	5½	1,784	18	2	22,639	0	7½
„ 31st December	17,483	12	8	7,056	13	0	24,540	6	2
							79,309	13	8
Deduct One-eighth of the Net Amount of Duties, payable to the Trustees of the Clergy and School Lands							5,800	0	0
Total Net Amount of Revenue for the Year.....£							73,509	13	8

Audit Office, Sydney, 17th January, 1828.

[A detailed abstract of revenue* also formed part of this enclosure. A copy will be found in a volume in series II.]

[Enclosure No. 2.]

Estimated
expenditure
chargeable to
colonial
revenue.

ESTIMATED ANNUAL EXPENSE of the following Departments and Establishments chargeable to the Colonial Revenue.

	£	s.	d.
1. The Governor and Office Establishment	5,000	0	0
2. The Legislative Council	800	0	0
3. The Judicial Establishment, including the Sheriff and Bailiffs ..	14,500	0	0
4. Colonial Secretary's Office	6,000	0	0
5. Colonial Treasurer's do.	1,600	0	0
6. Surveyor General's Department	6,000	0	0
7. Commissioners for apportioning the Colony	800	0	0
8. Customs Department, £4,550; Occasional Tide Waiters, £300; Cutter, £320; Rent of Warehouses, £500	5,670	0	0
9. Auditor's Office	1,400	0	0
10. Engineer Department	3,000	0	0
11. Surveyor of Roads and Bridges	1,700	0	0
12. Land Board, Clerk, etc.	450	0	0
13. Office of Internal Revenue	700	0	0
14. Surveyor of Distilleries	750	0	0
15. Mineral Surveyor	500	0	0
The Salary of the Mineral Surveyor is considered to be chargeable to the Funds to be raised for the introduction of Water in the Town of Sydney, on which object he is now exclusively employed.			
16. Coroners of the Territory	700	0	0
17. Botanical and Horticultural Establishments, Sydney and Parramatta	350	0	0
18. Government Slaughter Houses	105	0	0
19. Superintendent of Government Clocks	75	0	0
20. Barrack Master and Sergeant	330	0	0
21. Superintendent of Ordnance Stores	100	0	0
22. Pensions payable in the Colony	1,010	0	0
23. Pensions payable in England	1,530	0	0
24. Presbyterian Clergy	400	0	0
25. Roman Catholic Clergy and Schools	200	0	0
26. Miscellaneous Services and Disbursements	1,500	0	0
27. Colonial Agent	600	0	0

* Note 159.

ESTIMATED ANNUAL EXPENSE, &c.—*continued.*

	£	s.	d.	1828. 8 Jan.
28. Expense of Gazettes and Printing for the Public Departments ..	1,500	0	0	
29. Extra Pay of the Governor's Body Guard	130	0	0	
	57,400	0	0	
Advance as a Loan on Account of Clergy and Schools, until the Corporation shall be put in possession of the Church Lands	14,000	0	0	
Total ..	£71,400	0	0	

[Enclosure No. 3.]

ABSTRACT of the Estimated Annual Expense of the Maintenance, etc., of the Convicts under the immediate Superintendence of the Government, and the Departments and Establishments connected therewith. Estimated expenditure on convicts.

	£	s.	d.
1. Provisions for 4,500 Convicts at £10 16s. 6d. each	48,712	10	0
2. Cost of Wool, etc., to be Manufactured and made up into certain Articles of Clothing for the Convicts maintained by Government	1,100	0	0
3. Convict Establishments	1,800	0	0
4. Penal Settlements and Military Stations	3,900	0	0
5. Agricultural Establishments	2,200	0	0
6. Medical Department	3,300	0	0
7. Gaols and Hulk	2,200	0	0
8. Police Establishment	22,000	0	0
9. Master Attendant and Marine Establishm't	9,000	0	0
10. Expences of the 2 Veteran Companies (deducting Pensions) ..	5,700	0	0
11. Expences of the Company of the Staff Corps	3,360	0	0
12. Benevolent asylum	1,500	0	0
13. Rations for objects of Charity	400	0	0
14. Observatory at Parramatta	400	0	0
The Articles, for which the following Expences are incurred, are applicable as well to the Colonial as the Convict Establishment, and will be charged accordingly at the end of the year, Vizt.			
15. Stores from England	20,000	0	0
16. Cost of Articles, which it may be necessary to purchase in the Colony.	3,500	0	0
17. Fuel and Lights	1,000	0	0
18. Lime and Firewood for burning bricks	2,500	0	0
Total Amt. ..	£132,572	10	0

[Enclosure No. 4.]

STATEMENT of Outstanding Debts, now due, or which will become payable to the Government in the Course of the Year 1828. Statement of debts due to government.

Particulars.	Amount.
	£ s. d.
Promissory Notes for the purchase of Lands	42,760 1 2
do. for the purchase of live Stock with Interest ...	10,543 18 11½
do. for the purchase of other Govt. Property	1,782 10 0
Rents of Lands	396 16 8
Quit Rents	5,765 4 6½
Tolls lettings	1,919 3 1
Ferries lettings	125 0 0
Market Dues lettings	1,025 3 2
Auction Duties	52 11 0½
Coals Sold	685 18 11½
Fees and Fines of Magisterial Courts	175 7 3
Rentals of Buildings	498 15 11½
Loans with Interest	918 11 2
Service of Government Stallions	30 17 0
Horses shod in the Lumber Yard	14 4 0
Obligations to return for Cattle issued from Government Herds in Cash or Grain	2,495 10 7
Obligations to return in Kind 1,301 Cows issued for Maintenance of Convicts .....	.....
Total ..	£69,189 13 6

1828.
8 Jan.

UNDER SECRETARY STANLEY TO GOVERNOR DARLING.*

Sir,

Downing Street, 8th January, 1828.

Land to be
granted to
D. Duncombe.

The friends of Mr. David Duncombe having made application in his favor for an additional Grant of Land in New South Wales, I am directed to acquaint you that Mr. Huskisson is disposed to comply with their request to a reasonable extent, and desires that you will give directions accordingly.

I have, &c.,

E. G. STANLEY.

UNDER SECRETARY STANLEY TO GOVERNOR DARLING.*

9 Jan.

Sir,

Downing Street, 9th January, 1828.

Recommend-
ation of
J. Farmer for
land grant.

In consequence of the enclosed application from Sir Thomas Brisbane in favour of Captain Farmer, I am directed by Mr. Secretary Huskisson to request that you will make to him a grant of land upon the usual conditions, and afford him any other facilities, which may be compatible with existing Regulations.

I have, &c.,

E. G. STANLEY.

[Enclosure No. 1.]

SIR THOMAS BRISBANE TO UNDER SECRETARY HAY.

Dear Sir,

Makerston, Kelso, 24 Decr., 1827.

I trust you will forgive me for the liberty I now take in troubling you with this, which will be delivered by Captain Farmer, who commanded the *Mary Hope*, which brought us home from New South Wales, who has since made another voyage to the Colony, and is again going out to settle there; and, as he has satisfied me that He will carry considerable Capital with him, and is in every way eligible to hold a Grant of Land, my object in troubling you is to request you will be so good as to bring His case favorably before Mr. Huskisson, in order to forward his object as a Settler, and which will oblige

Dear Sir, &c.,

THOS. MACDOUGALL BRISBANE.

[Enclosure No. 2.]

[This letter, dated 10th January, 1828, from James Farmer was an application for a land grant in the usual form.]

UNDER SECRETARY STANLEY TO GOVERNOR DARLING.

(Despatch per ship *Mermaid*; acknowledged by Governor Darling, 21st December, 1828.)

Sir,

Downing Street, 9th Janry., 1828.

Application
from
G. Panton.

A further representation having been received from Mr. George Panton on the subject of his employment under the

Colonial Government, I have the honor of transmitting to you a copy of the same, together with the reply, which I have been directed by Mr. Secretary Huskisson to return to his communication.

1828.
9 Jan.

I have, &c.,

E. G. STANLEY.

[Enclosure No. 1.]

MR. GEORGE PANTON TO UNDER SECRETARY HAY.

Sydney, New South Wales, 2 June, 1827.

[*This was a lengthy letter, reiterating the grievances detailed in his letter dated the 7th March, 1825; see page 174, et seq., volume VII.*] Grievances
alleged by
G. Panton.

[Enclosure No. 2.]

UNDER SECRETARY STANLEY TO MR. G. PANTON.

Sir,

Downing Street, 9th Janry., 1828.

I have to acknowledge the receipt of your letter of the 2 June, addressed to Mr. Hay, and, having laid the same before Mr. Huskisson, I am directed to acquaint you in reply that, as the Governor alone can be a proper judge of the Claims and Merits of Individuals, who may be in the discharge of official duties in the Colony, so it must rest with him to distribute their services as shall appear to him to be expedient, and Mr. Huskisson cannot, therefore, give any directions with respect to your removal to a more lucrative situation, feeling perfectly satisfied that the Governor is disposed to assist your views, as far as may be consistent with the good of the Service. I am, &c.,

Refusal of
secretary of
state to
interfere.

E. G. STANLEY.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Elisabeth.)

Sir,

Government House, 10th January, 1828.

10 Jan.

In obedience to Earl Bathurst's Despatch, dated 18th March, 1825, No. 26, I do myself the honor to transmit a Return of the Prisoners, to whom "Tickets of Leave" have been granted in the course of last year, with a Statement of the Prisoners' Original Sentences, and the circumstances which have led to this indulgence.

Transmission
of return of
tickets of leave
issued.

I beg to submit whether, under the circumstance of "Tickets of Leave" being now granted under certain specified regulations, which have been approved, it will be necessary in future to forward a Nominal List of the Individuals, receiving this indulgence, or whether a Statement or Abstract of the Numbers will not be sufficient, particularising those only who have received Tickets of Leave under Special Circumstances.

I have, &c.,

RA. DARLING.

1828.
10 Jan.

[Enclosures.]

[This return specified the particulars relating to seven hundred and forty-one prisoners. A copy of the government order, dated 1st January, 1827 (see page 3), was also enclosed.]

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch marked "Private," per ship Elisabeth; acknowledged by Sir George Murray, 30th August, 1828.)

My dear Sir,

Sydney, 10th January, 1828.

Prosecution of
A. Macleay
for libel.

I must request your attention to the Proceedings in the Supreme Court, as reported in the "Australian" of the 2nd instant,* herewith enclosed, on a motion for a criminal Information against Mr. MacLeay, the Colonial Secretary, for Libels on Doctor Wardell and Mr. Wentworth, stated to be contained in two Government Orders, bearing his Signature. Copies of the Orders alluded to are herewith enclosed, and it will be observed that the names of the Individuals, who have chosen to consider themselves as the objects of these Orders, are not mentioned.

It appears the motion was made on Friday, the 28th of December, and that the Court took until the Monday following to consider the case, when the Chief Justice delivered the decision of the Court from a written Paper, as stated in the "Australian" herewith transmitted.

Criticism of
F. Forbes.

It is not for me to say, in opposition to the Opinion of the Court, that the Colonial Secretary, who merely signed in his official capacity a public Order, drawn up by the Governor, is *not* amenable in such a case, tho' I certainly had supposed it to be the fact. It would now seem to be optional with the parties, who made the application to the Court, to proceed or not as they may think fit. Neither shall I offer any observations on the decision, as delivered by Mr. Forbes. It may be esteemed by those, who are unacquainted with what has occurred here, as it is specious and imposing, and taken abstractedly is certainly well calculated to answer his purpose at Home; but a knowledge of previous circumstances exposes at once the act and the object of this Composition. It would have convinced me of the arduous nature of my Situation, and of the difficulties I have to contend with. If I ever could have entertained any doubt on these points, The Craft of the Man is without example. My Embarrassment has been considerably increased, if not entirely occasioned, by my never having had the assistance of a legal Adviser, who possessed either experience or information, and being at the same time opposed by a Man of the most profound

* Note 161.

subtlety, capable of giving a colour to things to answer his own purposes. Having been the Counsellor of the Father, he is now the friend and Advocate of Mr. Francis Stephen, hoping no doubt to have his own cause supported at Home by their relation* in your Office. Do not, my dear Sir, suppose I am disposed to complain unnecessarily. I am fully aware of the difficulty you must experience in selecting proper Individuals for Offices here, when it would appear that persons having claims on the Government consider that New South Wales affords an excellent Asylum for Fools and Madmen, as well as Rogues and Vagabonds. But I cannot shut my eyes to my own Situation, when I see myself opposed by such a Man as Mr. Forbes, having no other legal Adviser to look to than Mr. Baxter, a person altogether unqualified for the important Situation he is intended to fill, without legal knowledge and without experience; totally unable to move but under the direction of others, he is glad of assistance from any one who will give it. But to recur to the immediate subject of my Letter. It is, I think, evident Mr. Forbes took alarm the moment the Attorney General informed him that I had determined, in consequence of the result of the late Trials, not to proceed with the other Informations, which had been filed, and that he thought it unnecessary to express such opinions relative to the conduct of the Press (having then, as he states, for the first time been afforded an opportunity) as might have some effect in counteracting the imputation, to which he is fully aware the general tenor of his proceedings had subjected him. It cannot fail to be observed that he puts himself on the defensive throughout. If any confirmation could be necessary of the opinion above expressed that Mr. Forbes had taken alarm at the intimation of my intention not to persevere in the other prosecutions, the circumstance of his having thought it necessary to write to me (in conjunction with Mr. Justice Stephen) as soon as he was so informed, would have satisfied me.

The conduct of the Juries must be matter of surprize to any one, who was not present at the Trials. In the first, the Chief Justice declined to state the Law. In the last, one of the Jurors declared that, under the charge of the Chief Justice, it was impossible to return a Verdict of Guilty, though, from his own view of the case as a Military Man, he could entertain no doubt of the Fact; and it will be observed that neither the Chief Justice nor the Defendant or his Counsel were inattentive to the importance of impressing in the most forcible manner on the minds of the Jury the Situation, in which they stood with reference to the immediate Prosecutor, and the effect which their Verdict would have on the minds of the Public.

1828.
10 Jan.

Criticism of
F. Forbes.

Relations of
chief justice
with juries.

1828.
10 Jan.

Weakness of
counsel for
A. Macleay.

Opposition of
F. Forbes to
R. Wardell.

In addition to this, you will see that the Cause was in fact without an Advocate. The Attorney General cannot deliver himself, and Mr. Foster is by no means capable of contending against Mr. Wentworth and Dr. Wardell, who keep the Court and the Bar by their effrontery and talent equally in subjection.

I have no doubt of the fact, and it is the opinion of the legal Men here, as well as others, that no Man is more desirous than Mr. Forbes to see Dr. Wardell put down; but he dare not attempt it himself. He is too well aware how critically he is situated with respect to him. The extreme *mildness* of his observations with respect to the conduct of the Press could not fail to strike every one, who had had access to our Newspapers; and Mr. Forbes may rest quite sure that every one will agree with him that "it is impossible to say that the Press has not transgressed the Bounds of fair and temperate discussion."

Legal opinions.

In perusing my Despatch, No. 10,* by the present opportunity, the coincidence in the opinion of the Attorney and Solicitor Generals, as given in their report on the late trials, with the opinions of Messrs. Carter and Norton, transmitted to you so far back as the 1st of August last with my private letter of that date (Copies of whose letters I again forward that you may see in one view the opinions of those, who have an opportunity of judging from facts on the Spot) will immediately strike you, agreeing as they both do after such a lapse of time, and unconnected as these parties are in the inexpediency of any further attempt to institute prosecutions for Libel.

I remain, &c.,

RA. DARLING.

[Enclosure No. 1.]

[*This was a cutting from the issue of the "Australian" newspaper,† dated 2nd January, 1828.*]

[Enclosure No. 2.]

GOVERNMENT ORDER NO. 40.

Colonial Secretary's Office, 27th November, 1827.

IN announcing the approaching departure of His Honor Lieut. Governor Stewart, the Governor feels himself called on to express in this public manner his regret at an event, which will deprive him of the Services of that Officer. The Lieutenant Governor has exerted himself unceasingly in promoting the Public Service; and His Excellency feels infinitely indebted to him for his honest, hearty and uniform co-operation in furthering the views of His Majesty's Government. As the Prosperity of the Colony and the Happiness of the Inhabitants at large are the immediate objects of these Views, Lieutenant Governor Stewart, in faithfully rendering the assistance which his Office has enabled him to afford, has established a Claim beyond any fleeting or evanescent praise, to the lasting good will of the People and to the approbation of the Government which he has so honourably served.

Government
order issued
on departure of
W. Stewart.

* Note 162. † Note 161.

In taking leave of Lieut. Governor Stewart, on whose departure the Office of Lieutenant Governor will become extinct, His Excellency the Governor begs to assure him that he shall retain a grateful recollection of the assistance he has derived from his Services, and of the cordial manner in which that assistance has been invariably rendered.

His Excellency is confirmed in the assurance he had entertained, by the Orders he has received from the Lord Viscount Goderich, since writing the above, relative to certain Proceedings here, which have attracted the notice of His Majesty's Government, that the conduct of Lieut. Govr. Stewart and of every other Officer, who has done his duty, by discountenancing the Individuals who have laboured, as some have, even to the latest moment, to degrade and vilify the Government, will be duly appreciated as those who have acted otherwise will be made strictly accountable for their Conduct.

By His Excellency's Command.

ALEXANDER MCLEAY.

GOVERNMENT ORDER No. 43.

[A copy of this order will be found on page 646.]

[Enclosures Nos. 3 and 4.]

[These were copies of the letters from W. Carter to colonial secretary Macleay and from J. Norton to Governor Darling, dated 23rd and 31st July, 1827; see pages 479 and 481.]

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Mermaid.) *

Sir,

Downing Street, 12 January, 1828.

12 Jan.

I am directed by Mr. Secretary Huskisson to transmit to you the enclosed copy of a Memorial, which has been addressed to him by Mr. Howe, the Editor of the Sydney Gazette, respecting the Title, which he is desirous of assuming of "King's Printer"; and you will be pleased to report to me for the Information of the Secretary of State whether you see any objection to a compliance with Mr. Howe's request.

Transmission of memorial.

I have, &c.,

R. W. HAY.

[Enclosure.]

THE HUMBLE MEMORIAL* OF ROBERT HOWE, PROPRIETOR, EDITOR AND PUBLISHER OF THE SYDNEY GAZETTE, NEW SOUTH WALES, To the Right Honorable William Huskisson, His Majesty's Principal Secretary of State for the Colonies,

Memorial from R. Howe soliciting appointment as King's printer.

Sheweth:—

That your Memorialist most respectfully solicits the honour of the Appointment of "King's Printer" to His Majesty's Government of New South Wales.

* Note 163.

1828.
12 Jan.

Memorial from
R. Howe
soliciting
appointment as
King's printer.

That the Father of your Memorialist established the first Journal printed in that Colony, and that your Memorialist himself has been, during the last twenty five Years, unceasingly engaged with assisting and latterly in conducting that paper.

That, from the date of its first existence, the whole period has been distinguished by the same zeal, which at present animates it in the support of His Majesty's Colonial Government; and that your Memorialist's whole time and best efforts have during this period been almost exclusively occupied in opposing the Advocates of misrule, assuaging the angry passions of political discussion, and vindicating the introduction of those measures of His Majesty's Government, by the operation of which the Colony has reached its present state of prosperity.

That your Memorialist respectfully states that his property has considerably suffered by such duties, steadily pursued during times of high political excitement and in a State of Society, which rendered them alike useful to Government and dangerous to himself in such a degree, as once to expose his Life to the Act of an Assassin.

And finally That your Memorialist in support of these statements refers to the Testimonies of all the Authorities of the Colonies, under which he has had the honour to serve.

And your Memorialist, as in duty bound, will ever pray.

WILLIAM FLEMING,

Agent to Robert Howe, Editor of Sydney Gazette.

12 Wittams Buildings,

Old Street Road, 10 Jany., 1828.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 7, per ship Elisabeth.)

My Lord,

Government House, 12th January, 1828.

In acknowledging the receipt of your Lordship's Despatch, No. 4, dated the 13th of May last, I beg to assure your Lordship that every possible attention shall be paid to the Instructions communicated to me. Your Lordship will, I am sure, excuse me for observing at the same time that in some respects these Instructions do not appear to apply to the requisitions sent from hence, and in others are impracticable. As far, however, as they can be carried into effect, or the object which they have in view can be attained, they shall be strictly attended to.

I beg to observe, in reference to the passage, quoted from Mr. Herries letter, which directs that "the Number of Persons employed in the several Trades, for whose use the Tools are required, upon what Works they are employed, and how the produce

Acknowledg-
ment of
instructions
re requisitions.

of their labour is disposed of," shall be stated, it will I presume be sufficient to point out that the Articles, included in the Requisitions made by this Government, are not intended for any Specific object, but are lodged in Store for general purposes, and drawn from thence in detail, as circumstances render necessary. As they are consequently applied to various objects and to the different Services (Colonial, Military and Convict), it is impossible to Specify in the general Requisitions, transmitted in anticipation of the wants or demands of the different Services, any of the particulars desired in the paragraph quoted from Mr. Herries' Letter.

1828.
12 Jan.
Request made
by treasury.

In order, however, to carry into effect the spirit of these Instructions, and promote the object as far as practicable, I have directed that a Statement shall be made up at the end of each year, shewing how the Stores received from England have been appropriated, and the Sum with which the respective Services is chargeable, so that the Expense of each may be ascertained as far as circumstances will permit.

Annual
statements to
be prepared.

I do myself the honor to transmit for your Lordship's consideration Copies of two Minutes, which I have issued with a view to the classification of the Expences of the Government, so as to meet your Lordship's intentions in this respect.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

MINUTE NO. 51 TO THE COLONIAL SECRETARY.

Government House, 15th August, 1827.

It being desirable, with a view to a more systematic arrangement of the Accounts of the Public Expenditure of the Colony, that the Expenses of Articles issued from the General Store should be ascertained and classed separately under the following Heads, Vizt.

Instructions
issued re
classification of
expenditure
on stores.

1. Colonial. 2. Military. 3. Maintenance of Convicts.
it in consequence will be necessary that the Deputy Commissary General be furnished with separate Requisitions and Vouchers for Issues under these Heads of Service respectively, in order to their being brought to account in distinct Abstracts.

Under the first of these Heads are to be classed all Articles, issued for purposes and Services not Military, or not connected with the Maintenance, Clothing, Accommodation, or Management of Convicts.

Under the second Head, all *Army*, Military, Hospital, Barrack, and Quarter Master's Stores, and all articles issued for the construction or Repair of Buildings for the accommodation of the Troops.

1828.
12 Jan.
Instructions
issued re
classification of
expenditure
on stores.

All Articles, issued for the purpose of the Clothing, Management or accommodation of the Convicts, are to be classed under the third Head.

This last Head will consequently comprise all Stores and Articles for the Supply of Penal Settlements, and for the use of Government Vessels, which are maintained as means of Conveyance to the Penal and other out Settlements, as also all Supplies of Stores and Articles for the use of the Civil Hospitals and Agricultural Establishments.

2nd. To enable The Deputy Commissary General to carry into effect the proposed arrangement, Let the Civil Engineer, the Master Attendant, and any other Officer in Charge, who has occasion to apply for Stores or Articles under more than one of the Heads of Service mentioned, furnish separate Requisitions for the Articles, which they may require under each Head respectively, noting on the Requisition the Words "Colonial," "Military," or "Convict Establishments," according as the Articles are required for the one or the other of those Services; and Let it be directed that a corresponding distinction be attended to in any Estimates, which those Officers are required to furnish.

3rd. The following Officers, Vizt.

The Treasurer, The Deputy Commissary General, The Auditor of Colonial Accounts, and The Commissary of Accounts are to assemble as a Board every Six Months for the purpose of regulating and adjusting the Accounts between the Commissariat and the Colonial Treasury, since the date of the preceding Settlement.

This Board will, as soon as possible after the termination of the Months of June and December in each Year, make up and transmit to the Colonial Secretary for my information:—

1st. A Statement of the Cost or Value of all Articles issued from the General Store for the Service of the Colonial Government, distinguishing the Value of those for each Department.

2nd. A Statement of Contingent and other Expenses paid in the first instance by the Commissariat for the Service of the Colony, and by the Colonial Treasurer for the Service of the Commissariat respectively, in the preceding Six Months.

The Board will be pleased to regulate the Value of the Articles issued from the general Store, as referred to under the first of these Heads, according to the actual average Cost of the same, including Expenses, or, if that cannot be ascertained, according to the Average Current Value of the Articles at the time of delivery.

Under the second Head, it will be for the Board to determine what proportion of contingent or other Expenses for Services partly Military or for the maintenance of Convicts and partly

Colonial, but which for the sake of Convenience may have been defrayed in the first instance either wholly by the Commissariat, or wholly by the Colonial Treasury, ought properly to be borne by each of these Departments respectively, in order that the Sums advanced by the one Department on account of the other may be duly adjusted.

1828.
12 Jan.

Instructions
issued re
classification of
expenditure
on stores.

A Copy of this Minute will be communicated by the Military Department to the Deputy Commissary General and the Commissary of Accounts; and the Colonial Secretary will furnish the Treasurer and Auditor with a copy of the same, and make such communication to the other Civil Departments concerned, as may be necessary for their information and guidance.

RA. DARLING.

[Enclosure No. 2.]

MINUTE NO. 8 TO THE COLONIAL SECRETARY.

Government House, 11th January, 1828.

HAVING had under consideration the Auditor's Letter of the 22nd Ultimo, No. 27, on the subject of Minute No. 51 of last Year, Let it be adopted as a general Rule that the Expenses, hereafter specified, are to be charged under the respective Heads as follows, Vizt.

Additional
instructions re
classification
of expenditure.

" *Convict Establishments.*"

1st. All Expenses incurred for the maintenance of Convicts retained for the Service of the Government, as well as of the Tools and Implements they make use of.

2nd. All Expenses incurred on account of the Penal Settlements of the Prisoners confined there, and the Tools, Implements, etc., made use of at these Settlements.

The Expenses of the

3rd. Female Factory. 4th. Weaving Establishment. 5th. Shoemakers. 6th. Tailors

including the *Materials* made use of in these Establishments.

7th. The *Maintenance only* of the Prisoners employed on the Roads in Chain Gangs, who are under Colonial Sentences. If not so employed, they would in general be sent to the Penal Settlements, and be maintained at the Expense of the Home Government.

8th. The Maintenance of the Ordinary Road Parties, until such time as the Colonial Revenue shall be able to bear this Expense, it being proper that that Fund should be made chargeable therewith, the Road Parties being employed solely for the benefit of the Colony.

Colonial Establishment.

1828.
12 Jan.
Additional
instructions re
classification
of expenditure.

9th. The Expense of all *Tools and Impliments*, etc., made use of by the *Road Parties* and *Chain Gangs*. The Colony having the full benefit of their Employment should at least be charged with this Expense.

10th. It does not appear that any practical improvement can be made in *classing* the Items with Requisitions, as laid down in Minute No. 51. It follows as matter of course, whenever the specific purposes for which articles are required can be stated, that they should be classed accordingly under the proper Head, Vizt.

Colonial; Military; Convict;
and should not be included under any undefined Head, such as
"General Purposes."
RA. DARLING.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 8, per ship Elisabeth; acknowledged by Sir George Murray, 30th August, 1828.)

14 Jan.
Suspension of
W. H. Moore.

My Lord,

Sydney, 14th January, 1828.

I do myself the honor, in reference to my Despatch, No. 123 of the 14th December last, to transmit to your Lordship Copies of two Letters from Mr. W. H. Moore, Crown Solicitor, on the subject of his suspension, as reported in my Despatch above referred to.

I have only to observe that, at the time of Mr. Moore's suspension, I was totally unacquainted with the circumstance of his having formerly fallen under the displeasure of the Government. I was, therefore, uninfluenced by the events alluded to in his Letter, and the Sydney Gazette* of the 19th Ultimo (Page 2, Column 2 and 3).

Employment of
W. H. Moore
as attorney-
general.

As to his Appointment to act as Attorney General, it was in fact a measure of necessity. He had been employed by Sir Thomas Brisbane to assist Mr. Bannister; and, on this Gentleman's retiring from Office, there was no other person here, whom I could possibly place in that Situation, and I had the less hesitation in appointing him, Mr. Baxter being at the time daily expected from England. I must observe that I had but little reason to be satisfied with the manner in which Mr. Moore discharged the duties of that Office, it appearing, though repeatedly urged by me to prosecute the Editors of the Newspapers, that he was determined if possible to avoid it.

Previous
dismissal of
W. H. Moore.

As Mr. Moore's conduct during Governor Macquarie's administration has been brought into notice, I do myself the honor to enclose the Copy of a Despatch, written by Earl Bathurst on the

occasion alluded to, by which your Lordship will perceive that Mr. Moore's removal from Office at that time was confirmed by Lord Bathurst. But I have not been able to ascertain the circumstances relating to his reinstatement.

1828.
14 Jan.

I beg to add that I have not appointed a Successor to Mr. Moore, as the recent arrangements with respect to the Solicitor General appear to render the Situation of Crown Solicitor unnecessary. I have, however, called on the Attorney General for his Opinion on this point, and I shall do myself the honor to communicate with your Lordship, as soon as I receive it.

Office of crown
solicitor
unnecessary.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

MR. W. H. MOORE TO COLONIAL SECRETARY MACLEAY.

Sir, George Street, Sydney, 15th December, 1827.

I have the honor to acknowledge the receipt of your Letter of yesterday's date, which did not come to my hands until within this Hour.

Explanation by
W. H. Moore.

In answer, I beg leave to state that I was present at the Meeting* alluded to, but I took no forward part in the proceedings of that day, nor did I wholly assent to the second Resolution as passed.

I have, &c.,

W. H. MOORE.

[Enclosure No. 2.]

MR. W. H. MOORE TO GOVERNOR DARLING.

Sir, George Street, Sydney, 28th December, 1827.

I have hitherto refrained from trespassing upon Your Excellency's time by calling your attention to the circumstances, which have induced Your Excellency to adopt the measures you have considered necessary to take with respect to my case; but, in consequence of a recent publication which has appeared in the Sydney Gazette Newspaper, which is calculated to do me much injury, and of which I have just reason to complain, I now think it due to myself to trouble you, if for no other reason than for the purpose of removing any unfavourable impression Your Excellency may receive from its not meeting with any public denial.

Shortly after my arrival in the Colony, I was professionally concerned for the Revd. Benjamin Vale,† to conduct the necessary Law proceedings to procure the condemnation of an American trading Vessel, seized by him in this Port. Governor Macquarie was at the time out of Sydney, and a despatch had been sent off to him to know whether he would allow the Vessel to enter for trade, which he subsequently did; but the seizure was made

Suspension of
W. H. Moore by
L. Macquarie.

* Note 165. † Note 166.

1828.
14 Jan.

Suspension of
W. H. Moore by
L. Macquarie.

previous to the arrival of his order or permission; he considered the seizure to have been made in disregard of any order or permission he might give on the occasion, and consequently as done disrespectfully to him as Governor. I was, therefore, suspended from Office, and my case was referred on both sides to the Secretary of State, upon which reference I was ordered to be reinstated; but Governor Macquarie still refused to comply with the Secretary of State's directions, until I had furnished him with an explanation and assurance of my having acted professionally only, and without any intention of shewing disrespect to him; this I had no hesitation in doing, and, from that time until the period of his departure from the Colony, we were on the most friendly terms, in proof of which I may mention that, shortly after my reinstatement, on my meeting with a very serious accident in Van Diemen's Land, I experienced the most kind attentions both from him and from Mrs. Macquarie, who had happened to be there at the time; and I partook of their Hospitality at Government House, Sydney, the day of my return from thence.

Alleged
displeasure
of Sir T.
Brisbane.

With respect to the alleged displeasure of Sir Thomas Brisbane towards me, in reference to a letter I wrote to him as Secretary to a Meeting of Gentlemen, who proposed inviting him to a farewell Dinner, I can only state that I never heard of his having expressed any dissatisfaction at my conduct in that transaction; he certainly did not do so to me, when I waited upon him at Parramatta expressly on the occasion, or at either of several interviews I had with him subsequently in Sydney.

I can with confidence refer Your Excellency to any Gentleman, who was in the Colony at the time either of these transactions took place, or who have had an opportunity of knowing me since my arrival here, to speak as to my conduct with respect to either of the occasions alluded to, or to inform Your Excellency whether I ever have interfered in any way in the many political questions, that have from time to time been agitated in the Colony since my first coming here, and which I feel assured Your Excellency will find I have on all occasions most scrupulously avoided.

Repudiation of
statements in
Sydney Gazette.

The whole of the Statements published in the Late Sydney Gazette (but which I have not now at hand to refer to as to other particulars) are false as far as regards myself; and, were it not my wish to avoid the very unpleasant measure of resorting to Legal proceedings for redress, I should before this have taken such steps as would compel the Editor of that Paper to justify his assertions, or to answer me in Damages for the calumnies he has so unjustly propagated against me.

In adverting to the late proceedings of the Turf Club, I have no other excuse to offer for my having tacitly assented to the

passing of the Resolutions, which have given Your Excellency so much offence, than that they did not at the time strike me to bear the construction Your Excellency has put upon them; had they done so, I should most certainly have opposed their being carried as far as laid in my power.

1828.
14 Jan.

Participation in
proceedings of
turf club.

The only Societies I have ever been a Member of in this Colony, until I entered the Turf Club, were the Agricultural Society and a very limited reading Society; the latter was very soon abandoned and my only motive for becoming a member of the Turf Club was that I possess several young Colts of the breed of the lately imported Blood Horses, and, as I wished to try the capabilities of them, I was induced with that view alone to offer myself as a Candidate. I was only elected a Member the day preparatory to the late Dinner. I consequently never attended any of their previous Meetings, And the business of those days met with so little observation with me, that I may be said to have scarcely given it a thought.

I can only give Your Excellency my assurances that neither on that or on any other occasion have I ever intended any disrespect to you or your Government; and, in the various Situations I have had the honor to fill in the Colony, it was always my study to support the Government by every exertion I was capable of.

I have, &c.,

W. H. MOORE.

{Enclosure No. 3.}

[*This was a cutting from the issue* of the "Sydney Gazette," dated 19th December, 1827.*]

{Enclosure No. 4.}

[*This was a copy of Earl Bathurst's despatch to Governor Macquarie, dated 24th July, 1818; see page 822, volume IX.*]

UNDER SECRETARY HAY TO GOVERNOR DARLING.†

Sir,

Downing Street, 15 Jan., 1828.

15 Jan.

I am directed by Mr. Secretary Huskisson to transmit to you Copies of two letters from Lieutenant Stirling, late Aid de Camp to Sir Thomas Brisbane, relative to a Grant of Land, which he is desirous of obtaining in New South Wales.

Application
from
R. Stirling for
land grant.

You will see by the reply, which Lord Goderich returned to Mr. Stirling's first application (Copy of which is also enclosed), the grounds upon which his Lordship was induced in the first instance to doubt the propriety of acceding to his request.

* Note 164. † Note 6.

1828.
15 Jan.
Application
from
R. Stirling for
land grant.

As, however, Mr. Stirling has now succeeded in removing the objection, originally entertained by the Secretary of State with regard to the person whom he intended to employ as his Agent, Mr. Secretary Huskisson desires me to request that you direct a Grant of Land to be made to Mr. Stirling to the extent mentioned in his letter, viz. 2,560 Acres.

I have, &c.,
R. W. HAY.

[Enclosure No. 1.]

LIEUTENANT STIRLING TO UNDER SECRETARY HAY.

Sir, 20 Hans Place, Sloane Street, 7th August, 1827.

I beg to solicit your kind offices in obtaining for me, through The Right Honble. The Principal Secretary of State, a grant of Land in Van Diemen's Land. I ground my claim to His Lordship's indulgence in consequence of having held two appointments of considerable importance in the Civil affairs of that Colony, the duties of which I am proud to say have been discharged to the entire satisfaction of my superiors. As the Principal Assistant Engineer, I had the Superintendence of all the Public Works and buildings in the Town and neighbourhood of Sydney, where upwards of 1,000 Convict Artizans and Labourers were employed under my immediate care; on being removed from this Office to His Excellency Sir Thomas Brisbane's Staff as Aide de Camp, I acted as His Private Secretary, in which confidential situation much of the public business of the Colony passed through my hands. For these appointments, I have never as yet received any allowance or indulgence beyond the mere pay annexed to the respective Situations.

In making this application for Land, I beg to say that I have sufficient capital for the cultivation of the largest grant of land usually given. I am possessed of a House in Sydney worth £600, and can produce satisfactory evidence of being worth nearly £3,000 in this country, all of which I am willing to devote to my object in that Colony.

It may be here proper to remark that I have no immediate intention of going out to New South Wales, but propose doing so at some future period, when my agent there (Mr. Murdock) shall report favourably of my future property in that Country; in the meantime, I trust The Right Honble. The Secretary at War will not find his confidence misplaced, and that, though absent, I shall be effectually of as much service to the Colony, as if I were on the Spot.

I have, &c.,
R. STIRLING, Lieut., 3rd Regt.

[Enclosure No. 2.]

1828.
15 Jan.

UNDER SECRETARY HAY TO LIEUTENANT STIRLING.

Sir,

Downing Street, 11th Augt., 1827.

I have laid before Lord Viscount Goderich your letter of the 7th Instant, in which you solicit a Grant of Land in New South Wales, stating your intention of cultivating it by means of an Agent, that Agent being Mr. Murdock, who is already resident in the Colony. Lord Goderich desires me to acquaint you in reply that, provided you employ a *resident* Agent on your property, who can give up the whole or chief part of his time to its cultivation and improvement, and to whom the Government could look with as much confidence as to yourself for the due performance of the conditions of the Grant, he would feel every disposition to comply with your request; but, as Mr. Murdock, from having large concerns of his own to attend to, cannot spare the time, even supposing he possessed the inclination to bestow that attention upon your Grant, which would be necessary to ensure the fulfilment of the present conditions, Lord Goderich must decline acceding to your wishes, until he shall be better satisfied on the point to which I have adverted.

I remain, &c.,

R. W. HAY.

[Enclosure No. 3.]

LIEUTENANT STIRLING TO UNDER SECRETARY HAY.

Sir,

Pirbright Lodge, Guildford, 12th October, 1827.

Referring to your letter of the 11th August, I do myself the honor to acknowledge the gracious reply of the Right Honble. The Secretary of State to my application for a Grant of Land in Van Diemen's Land, at the same time objecting to Mr. Murdock being employed as my Agent there in consequence of his holding a Government appointment.

I here beg to correct a misunderstanding, arising from my not having clearly explained in my last that I alluded to Mr. Robt. Murdock, a free Settler proceeding to the Colony, and *not* to his brother, Mr. P. Murdock, who holds office there; and I trust the former gentleman, who I have carried personally to Downing Street, may be approved as my Agent, he being a young man of the highest character and willing to fulfill all the duties imposed upon him as my representative in the Colony.

I, therefore, solicit you will be pleased to cause an Order to be forwarded to His Excellency The Governor for my receiving

1828.
15 Jan.

a portion of land of the largest extent usually given to free Settlers, and trusting that my pecuniary means and past Colonial Services may authorize such an indulgence,

I have, &c.,

R. STIRLING, Lieut., 3rd Regt.,

late A.D.C. to Lt. Gen. Sir Thos. Brisbane.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 9. per ship Elisabeth; acknowledged by Sir George Murray, 30th August. 1828.)

My Lord,

Sydney, 15th January, 1828.

Leave of absence
granted to
H. G. Douglass.

I had the honor of informing your Lordship, in my Despatch No. 124, dated the 15th of December last, of the steps I then proposed taking in the case of Doctor Douglas. I have since been induced to deviate from the Line I had intended to pursue, and have granted Doctor Douglas leave to return Home.

Correspondence
with
H. G. Douglass.

Though I adverted in my former Letter to one, which I had written to Doctor Douglas in pursuance of the Orders, conveyed to me in Your Lordship's Despatch, No. 28 of the 12th of July last, I did not at that time forward a Copy of my Letter, not having received any acknowledgement of it, though it had been duly received by Doctor Douglas. I now beg leave to do so, as a means of rendering the correspondence complete, though I am still without a reply.

I do myself the honor further to transmit to your Lordship the accompanying Copy of a Letter, which I addressed to Doctor Douglas on the 20th of December, which will put your Lordship more fully in possession of the view I have taken of the case; and I can entertain no doubt your Lordship will concur in Opinion that Doctor Douglas could not consistently be continued in Employment by this Government. I beg leave, at the same time, to transmit a Copy of Doctor Douglas's Answer to my Letter, last alluded to, and of my reply, allowing him to receive Half Salary, as in the case of Officers obtaining Leave of Absence, until your Lordship shall decide on his case, provided he does not delay his departure beyond six Months, which period will be necessary to enable him to arrange his Affairs, his own being extensive, and he being likewise Agent for several Absentees.

It having been intimated to me that Doctor Douglas, who, it appears, had understood that Mr. Foster, the Acting Solicitor General, was likely to succeed him as Commissioner of the Courts of Requests, had expressed some surprize at the circumstance, that Gentleman having as he stated lately passed three

Association of
W. Foster with
W. C.
Wentworth.

days with Mr. Wentworth at his Country House, I was induced to call on Mr. Foster that I might be informed of the fact; and I do myself the honor to enclose a Copy of a letter, which I received from that Gentleman in consequence.

1828.
15 Jan.

It is I presume unnecessary for me to take up more of Your Lordship's time with this matter, having lately written so fully upon it, and having shewn, as I trust I have done by the Enclosure to this Letter (No. 1), that the conduct subsequently pursued by Doctor Douglas at the Turf Club was no less reprehensible than that at the Public Meeting,* which took place in January last Year, and for which he was reprov'd by your Lordship's Orders.

Conduct of
H. G. Douglass
at public
meeting and
turf club
dinner.

The similarity of his proceedings in these Cases is perhaps not unworthy of remark. At the Public Meeting, he supported the Petition and applauded the proceedings, though the constituted Authorities and the Legislative Council, of which he was the Clerk, had been spoken of in the most disrespectful terms; and at the Dinner of the Turf Club he proposed the health of Mr. Wentworth, who had recently insulted the Governor and the Government in the most public manner by threatening to Im-

Conduct of W.
C. Wentworth.

peach the former (having in vain endeavoured to obtain the necessary Evidence) and declared in the face of the Community on the occasion of a public Trial† in the Supreme Court that the measures of the latter were "diabolical and damnable."

This, my Lord, is an imperfect Sketch of the Character of Mr. Wentworth, whose hostility to the Government is avowed and notorious, whom Doctor Douglas (filling a distinguished Office and receiving a large Salary from the Government) selected as a Person deserving the Honor of having his Health drunk at a public Dinner, where several of the Officers of Government were assembled.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

GOVERNOR DARLING TO MR. H. G. DOUGLASS.

Sir,

Government House, 3rd December, 1827.

I have received the Commands of the Right Honorable the Principal Secretary of State for the Colonies to convey to you the Sentiments of His Majesty's Government with respect to your highly improper and extraordinary Proceedings on the occasion of the public Meeting,* which was convened for the purpose of petitioning his Majesty to extend to the Inhabitants of this Colony the indulgence of Trial by Jury and a House of

Official censure
passed on
H. G. Douglass.

* Note 103. † Note 167.

1828.
15 Jan.

Official censure
passed on
H. G. Douglass.

Assembly, when it appears that you, being a Servant of this Government, took a very prominent part by supporting the Prayer of the Petition.

His Lordship has been pleased to command me to remark that the confidential Situation, you held at the time, should have induced you to abstain from joining in the discussion of such matters, as were submitted to the consideration of the Meeting, and that it was highly disrespectful to the Council, whose Clerk you were, to have sanctioned, by taking a Share in the proceedings of the Day, the sort of Language in which that Body was spoken of upon that occasion.

Finally, I am directed to caution you, so long as you may be continued in the Employment of the Colonial Government, against interfering in any similar measure, as a repetition of such proceedings will subject your conduct to more especial notice than His Majesty's Government, under an impression that you may not have been aware at the time of the impropriety of the course you were pursuing, are now willing to take of it.

I have, &c.,

RA. DARLING.

[Enclosure No. 2.]

GOVERNOR DARLING TO MR. H. G. DOUGLASS.

Sir,

Government House, 20th December, 1827.

Dismissal of
H. G. Douglass
from office.

The Orders conveyed to me by the Right Honorable the Secretary of State for the Colonies, which were communicated to you in my Letter of the 3rd inst., respecting the prominent part you took at the public Meeting, held in January last, by supporting the Prayer of the Petition, moved on that occasion, when the existing Institutions of the Colony and the constituted Authorities underwent the most severe Animadversions, have drawn my attention to the circumstances, which have lately occurred, and induced me to refer more particularly, than I had previously done, to the Reports of the proceedings at the Dinner, given by the Turf Club on the 9th November last. It appearing that you took a prominent part also on that occasion by proposing the health of the Chairman, who, independant of the occurrences of the moment, had in the most public Manner on a recent previous occasion abused the Government and designated its measures as "diabolical and damnable," and further had repeatedly avowed his intention of Impeaching me as the Governor of this Colony, without carrying his threats into effect; such proceedings on your part tending to countenance an Individual who had endeavoured to degrade the constituted Authorities and

the Government, under which you are employed, being contrary to your duty as an Officer of that Government and subversive of the good order of Society, I consider it my duty, in pursuance of the intimation of His Majesty's Government, as conveyed to you in my Letter of the 3rd inst., to signify to you that your Services as Commissioner of the Courts of Requests will be dispensed with until the Secretary of State shall decide on your Case.

1828.
15 Jan.

Dismissal of
H. G. Douglass
from office.

I have, &c.,

RA. DARLING.

[Enclosure No. 3.]

MR. H. G. DOUGLASS TO GOVERNOR DARLING.

Sir,

Sydney, 27th December, 1827.

I had the honor of receiving Your Excellency's Letter of the 21st Instant on my return to Town last night.

Regrets
expressed by
H. G. Douglass.

It is with feelings of deep regret that I find I have fallen so heavily under the displeasure of Your Excellency, as to induce you to suspend me from the functions of my Office. I had hoped that the reiterated and sincere assurances, I gave to the Colonial Secretary on Sunday, of the total want of intention to convey the slightest degree of disrespect to Your Excellency in proposing the Health of the Chairman at the late Turf Club Dinner, would have induced your Excellency to consider the matter in a more favorable point of view as regarded myself.

For a length of time, I have refrained from mixing in Society, having, as Your Excellency is aware, retired to the Country and never visited Sydney, except when business obliged me. It was but at $\frac{1}{2}$ past 5 o'clock on the day of the Dinner that, upon retiring from the Police Office, I was urged by a Friend of mine to go to this, to me truly unfortunate Dinner. I neither knew who were going or who was to be in the Chair. I was the last person who arrived. The Dinner was being put on the Table. I had had no communication whatever with the Chairman on any subject, except as my Solicitor and occasionally at the Meeting of the Bank, for the last 12 Months; nor had I ever been at his Residence during the whole of that time. I proposed his health in the following Terms:—I beg to propose the health of the Chairman as a successful Breeder of Horses. Now I do most humbly and respectfully ask Your Excellency can any thing be construed in these Words as being in the most remote degree disrespectful towards you; and I declare most solemnly that nothing, which occurred on the part of the Chairman, struck me *at the time* as having the least tendency to the slightest reflection or disrespect towards Your Excellency. The Words, Diabolical and Damnable, I never heard of until I received your Letter of

Explanation of
his presence
at turf club
dinner.

1828.
15 Jan.

Threats made
by W. C.
Wentworth.

Conduct of
H. G. Douglass.
at dinner.

Disclaimer of
disrespect for
governor.

Request for
leave of absence.

the 20th. Upon enquiring since, I find I was fifty Miles from Sydney, at the time they were made use of; with respect to the Threat of Impeachment, I certainly heard of it through report, never from Mr. Wentworth, and, in a conversation I had at the time with the Colonial Secretary on the rumour, I expressed my belief that he never would do such a thing. I considered it as an expression of Sound and Fury, signifying nothing; never having heard more of it from that time until in a late conference with Your Excellency, I concluded my Opinion to have been correct. I do, therefore, most earnestly entreat Your Excellency will take my case into favorable reconsideration, enquire of Mr. Lairdly and Mr. Balcombe, who were sitting by me at the Dinner as to my manner and expression there. I most solemnly aver that disrespect to Your Excellency never entered into my mind. I fearlessly Challenge any Man in the Colony to cite any Act or expression of mine at any time, that could be construed into a disregard to your Person or disapprobation of your Measures. I have always held and avowed that it was the Duty (even as matter of principle) of every Civil Officer to support the Government, whose Bread he eat.

I, therefore, once more humbly request your Excellency to waive your intention of suspending me, and permit me to go to England on leave of Absence with Half Salary, in order that I may pray His Majesty's Government to accept my Services in another Colony.

Permit me to subscribe myself,

Your Excellency's, &c.,

HENRY G. DOUGLASS.

[Enclosure No. 4.]

GOVERNOR DARLING TO MR. H. G. DOUGLASS.

Sir,

Government House, 4th January, 1828.

Leave of absence
granted.

I have the honor to acknowledge the receipt of your letter of the 27th ultimo, and acquaint you that you have leave to return to England, retaining half the Salary of the Office of Commissioner of the Courts of Requests, and that you will be allowed six Months from the date of the Appointment of your Successor, should you require it to enable you to make the necessary arrangements with respect to your private Affairs. Should you not have availed yourself of the Leave granted to you during the time specified, the Half Salary will be discontinued at the expiration of that period.

I have, &c.,

RA. DARLING.

[Enclosure No. 5.]

MR. W. FOSTER TO GOVERNOR DARLING.

1828.
15 Jan.

Sir,

42 Pitt Street, 3rd January, 1828.

It having been intimated to me that some one has represented to Your Excellency that I am a companion of Mr. Wentworth's, and that I have been staying at his House for three days together, In the first place I beg leave to assure your Excellency that such representation is totally false, and in the next place to make a simple statement of facts, which will enable Your Excellency to judge upon this point yourself.

Explanation by
W. Foster of his
visit to house
of W. C.
Wentworth.

Mr. Wentworth has *never* on any occasion been in my Lodgings, since I came to the Colony; and I have never been at Mr. Wentworth's House but on one occasion, which occurred in the following manner.

One evening about two Months ago, I was riding on the South Head Road, when Mr. Wentworth *accidentally* overtook me; we entered into conversation respecting an Action, which I had brought on behalf of a Mr. John McIntyre against a Client of Mr. Wentworth's (Mrs. Jenkins), and which Action I was anxious to compromise, as I considered such a course best for the interests of my Client, and indeed had been requested by him to try to do so. I rode with Mr. Wentworth, until he turned from the Main Road, and then was going to leave him, but he urged me very much to ride on with him to his House, and take some Dinner with him. At first I refused; but at last I consented, feeling some little wish to see the House, which I had heard was an extremely pretty place. When Dinner was over, I rose to go away, but he observed that it was nearly dark (which it was) and that I had much better stay all night, and that I might be quite early enough in Sydney for business in the Morning; as it really was just on the point of being dark, I consented to this, and left his house very early next morning. This, I assure Your Excellency, is the *only* time that I have been in Mr. Wentworth's House, since I came to the Colony; and I have never seen him at his Office but *once*, which was in company with Mr. John McIntyre, and *solely* relating to the compromising of the above mentioned Action. To conclude, I beg leave to assure your Excellency that Mr. Wentworth's general conduct to me has been such that it is totally impossible that I ever could be intimate with him, even if I had no other reasons for preventing me from being so.

I have, &c.,

WILLIAM FOSTER.

P.S.—Mr. John McIntyre is at present in Sydney, and both he and Dr. Gibson know how anxious I was to get Mr. Wentworth to compromise the above mentioned Action.

1828.
15 Jan.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch marked "Private," per ship Elisabeth; acknowledged by Sir George Murray, 30th August, 1828.)

My dear Sir,

Sydney, 15th January, 1828.

General
remarks
on case of
H. G. Douglass.

I wrote you so fully respecting Dr. Douglas in my private letter of the 17th of last Month that I have but little to add on the subject by the present opportunity.

My public Letter of this date, No. 9, contains a comprehensive view of the case, and I trust will be considered sufficient for the object in view, his removal from this Government at least, without entering into any other matters.

When I last wrote to you, I had determined to suspend him, and I wrote to him accordingly on the 20th December; but I have since been induced, as I have reported by this opportunity, to permit him to return Home on Leave. He will be the more quietly got rid of in this way, though he is a person whose fate has excited no interest here, being considered a *busy, meddling, intriguing, mischievous* fellow, who, from the Situation of Assistant Surgeon, had during the late Administration succeeded in raising himself to an extraordinary degree of unmerited importance, by which he obtained one of the most confidential Situations under the Government, and for which certainly no man in the Colony was less suited. But, as I observed to you in my former Letter, Mr. Mackaness's Removal rendered it in fact impossible to continue Doctor Douglas. The former, as I stated, filled a public Situation and acquiesced in the occurrences of the moment, the latter on both the occasions alluded to was a Volunteer and acted!

I have been the more induced to grant Doctor Douglas leave to return Home from a recollection of its having been in contemplation, when he was last in England, to give him an Appointment in some other Colony, rather than permit him to return to this; and, as I conclude he is now satisfied there is no longer any chance of his succeeding here, there will be no difficulty in disposing of him. It would not be necessary to furnish a better proof of Doctor Douglas's Character, than that of his having had the address to enroll himself amongst the "Saints." Without intending to question his moral or Religious Principles, I certainly should not readily believe that he has any particular claim to be identified with the Disciples of Mr. Wilberforce.

I remain, &c.,

RA. DARLING.

P.S.—I had intended before closing my Letter to have mentioned that I understand Dr. Douglas means to state in justification of his attending the Public Meeting in January, 1826,

that he was asked by Colonel Dumaresq to do so, and that my A.D.C. and the Major of Brigade were both present. But I presume he will not say that Col. Dumaresq required him to speak on the occasion. If he did ask him to attend, which was without my knowledge, it could only have been for the purpose of knowing what was going on, not being aware that any of the Staff would be present. He himself having kept away from the Meeting at my desire. He must have been pretty certain that Doctor Douglas would attend, and it is not improbable, from his intruding himself as he endeavoured to do on all occasions, that he may have asked him to let him know the result of the Meeting.

1828.
15 Jan.

Reason for
presence of
H. G. Douglass
at meeting.

R.D.

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Mermaid.)

Sir,

Downing Street, 16 Jan., 1828.

16 Jan.

I am directed by Mr. Secretary Huskisson to transmit to you the enclosed Copy of a letter addressed to the Secretary of State by Mr. McIntyre, respecting the Land in dispute between him and Mr. Dangar, late of the Surveyor General's Department, whose conduct connected with that transaction forms the subject of your Dispatch of the 10th May last.

Transmission of
letter from
P. McIntyre.

I am, &c.,

R. W. HAY.

[Enclosure.]

[A copy of this letter,* dated 1st June, 1827, will be found in a volume in series II.]

UNDER SECRETARY HAY TO GOVERNOR DARLING.

(Despatch per ship Mermaid; acknowledged by Governor Darling, 31st July, 1828.)

Sir,

Downing Street, 16 January, 1828.

I am directed by Mr. Secretary Huskisson to transmit to you the enclosed Copies of two memorials, which have been transmitted to this Department by Sir Thomas Brisbane, from Messrs. Walker and Hassall respecting an extension of their Grants of Land in New South Wales. Observing that one of the Parties (Mr. Walker) is the person, who had formerly the charge of the Female Orphan School, and who was dismissed by the Arch-deacon from that situation in consequence of his neglect of duty, Mr. Huskisson has not deemed it necessary to convey any instructions to you with reference to the two applications in question, feeling confident that, if the parties should not be

Transmission
of memorials.

* Note 168.

1828.
16 Jan.

undeserving of the indulgence they solicit, they will meet from you every disposition to comply with their requests.

I am, &c.,
R. W. HAY.

[Enclosure No. 1.]

LIEUTENANT STIRLING TO UNDER SECRETARY HAY.

Sir, London, 11th January, 1828.

Submission of
memorials by
Sir T. Brisbane.

I am directed by Lieut. General Sir Thomas Brisbane to have the honor to present the accompanying memorials to you from Messrs. Walker and Hassall, respecting an extension of their Grants of land in New South Wales.

Sir Thomas regrets that these gentlemen had not adopted the more regular and obvious plan of laying their requests in the first instance before the present colonial authorities, as their statements are strictly borne out by fact, and their claims just and well founded. Impressed with this conviction, Sir Thomas trusts any irregularity in the mode of application may not prejudice the otherwise strong grounds of their cause, and will feel greatly obliged to you by causing their Memorials to be brought under the favorable consideration of The Right Honble. The Secretary of State for the Colonies, that their respective cases may meet with that attention on the part of the Colonial Government, which Sir Thomas conceives the justness of their claims entitle them to.

I have, &c.,
R. STIRLING.

[Enclosure No. 2.]

THE HUMBLE MEMORIAL OF WILLIAM WALKER,

New South Wales, Parramatta, 10th June, 1827.

Most respectfully sheweth,

Memorial of
W. Walker
soliciting
land grant.

That Your Lordship's Memorialist came to New South Wales to endeavour to civilize and instruct the aborigines of this Country, under the auspices of the Wesleyan Missionary Society. For a considerable time, Memorialist had the charge of the Government Native Institution, till the Females were removed to the Female Orphan House, to which situation Memorialist was appointed as Master, and Mrs. Walker as Matron. The manner in which their duties were discharged in these situations, Sir Thomas Brisbane, then Governor, and Major Goulburn, then Colonial Secretary, will not hesitate to testify. Your Lordship's Memorialist also ventures to hope that his public and private political character will meet with Your Lordship's favourable consideration, as a reason to justify his petition for an extention of his present Grant of Land.

Your Lordship's Memorialist has held a grant of 2,000 Aeres of Land at Bathurst, and has kept 20 Government Servants

thereon ever since he became possessed of it. Memorialist has 2,000 breeding Sheep and upwards of 200 head of horned cattle together with 20 horses to depasture. In improving the breed of these Sheep by introducing Saxon Rams, Memorialist has expended large Sums of Money, and has been put to very great labour and inconvenience for want of Land. Nearly 3 years ago, Your Lordship's Memorialist made a similar representation to this to His Excellency Sir Thomas Brisbane, who ordered a Ticket of occupation for 2 geographical Miles in any unsurveyed part of the Colony, with a promise that, when Surveyed, a Grant should be given, according to the expense laid out in improving the place and the number of Government servants employed thereon. From 10 to 20 men were kept here for 18 months, and nearly £600 laid out in Buildings, Stock-Yards, cultivation, etc., by Memorialist's Brother and himself; subsequent Government arrangements have thrown them out of this place, and they are compelled to retire to very distant parts of the Colony, from which land they are liable to be ejected any moment to their very serious injury and loss, unless Your Lordship will be pleased to order a permanent possession to be given to Your Lordship's Memorialist.

1828.
16 Jan.

Memorial of
W. Walker
soliciting
land grant.

Your Lordship's Memorialist has been under the absolute necessity for the last four Years to dispose of his Stock to a serious disadvantage, in consequence of not having land sufficient to depasture them, and is also prevented from laying out his Capital in improving them for his own benefit, the good of his children, and the prosperity of the Colony.

Memorialist trusts that Your Lordship will be pleased to order him an additional Grant of land at a place called by the natives Boolong, where some of his flocks and herds are now depasturing. The land is unsurveyed and beyond Bathurst in a South West direction about 55 Miles.

For such an indulgence, Your Lordship's Memorialist and rising family as in duty bound will ever pray.

To The Right Honorable Earl Bathurst, K.C.B.,

One of His Majesty's Principal Secretaries of State for the Colonies, etc., etc., etc.

[Enclosure No. 3.]

THE HUMBLE MEMORIAL OF JAMES HASSALL.

New South Wales, Parramatta, 9th June, 1827.

Most respectfully Sheweth.

That Your Lordship's Memorialist is a native of the Colony of New South Wales, and that his parents came Free, and have been Settlers therein upwards of 28 Years. Memorialist's Father held Government Situations under Governors

Memorial of
J. Hassall
soliciting
land grant.

1828.
16 Jan.
Memorial of
J. Hassall
soliciting
land grant.

Bligh, King and Macquarie, and on account of the infirmities of age was obliged to resign a short time previous to his death, which lamentable occurrence took place in August, 1820. Your Lordship's Memorialist was left to take charge of the Property and Stock left to an aged Mother and three Sisters, two of whom are since that time married.

Your Lordship's Memorialist begs leave to express his gratitude to the Government for two several Grants of Land, Viz. one for 230 and another for 800 acres, making a total of 1,030 acres; upon this Land Your Lordship's Memorialist has to depasture upwards of 300 Head of Horned Cattle, more than 20 Horses, and about 2,000 breeding Sheep. Your Lordship's Memorialist also on the average keeps not less than 30 Servants of the Crown. Memorialist humbly submits to Your Lordship that 1,030 Acres are not sufficient to depasture his Stock.

For several years, Your Lordship's Memorialist has been so pressed for pasturage that he has been obliged to trespass on the Crown Lands to a considerable extent and to dispose of his Stock to very considerable disadvantage. Memorialist, however, will not disguise to Your Lordship that he has materially repaired his injury, occasioned by Sales of Surplus Stock, by improving his flocks by introducing Merino and Saxon breed among his own. His success also has answered his expectations. But, after 7 or 8 Years hard striving, and having brought his flocks to that state, which calls upon him to encrease their numbers with their quality, he earnestly Solicits Your Lordship to aid his efforts by ordering him an extension of his present Grants of Land.

Your Lordship's Memorialist, in conjunction with his Brother, made a similar representation to the above to His Excellency Sir Thomas Brisbane, who so far approved of the Memorial as to order two geographical miles to be allotted to His Excellency's Memorialist, with an assurance that, in proportion to the value of the improvements made on the land and the number of Government Servants kept there, when the land was surveyed, an additional Grant should be made to both to compensate for their labors and the expense they saved to the Crown. His Excellency's Memorialists expended not less than £569 on this establishment, and kept for 18 months from 10 to 20 men constantly employed thereon. Sir Thomas did not remain long enough to redeem his pledge, and the place was disposed of to others.

Your Lordship's Memorialist has applied to purchase Crown Lands but without effect; and the encrease of his stock and his desire of improving them forces him to make his case known to Your Lordship in the hope of an additional Grant of Land.

Your Lordship's Memorialist has expended on his present grants not less than £1,000 in improvements, and must further improve them, if Your Lordship be pleased to Order him land on which to depasture his Stock.

1828.
16 Jan.
Memorial of
J. Hassall
soliciting
land grant.

Independent of these circumstances, Your Lordship's Memorialist has to provide pasturage for the Stock of his Mother and Sister, consisting of about 35 Horses, 600 head of Horned Cattle, and 3,500 Breeding Sheep; last year, Memorialist's Mother lost not less than £5,000 worth of Ewes, in consequence of being obliged to feed them on Crown Lands, adapted for nothing but horned cattle, and would have been deprived of the remainder, had not the liberal Grant of 2,000 acres by Sir Thomas Brisbane to her Son in law, William Walker, afforded a temporary pasturage for them.

Your Lordship's Memorialist does in no way envy others, who have an abundance of land; but, believing in Your Lordship's liberality and candour, rests assured that he will receive through Your Lordship a Grant of Crown Lands equal to the demands of his own Stock, and that the beneficence of the Crown will be extended in some way or other towards his Mother.

Memorialist will not load this Petition with official documents. The general truth of these statements are known to Sir Thomas Brisbane and Major Goulburn, who he is assured will testify to their correctness. He rests his case solely on Your Lordship's judgment, as the official organ of His Gracious Majesty's munificence, and humbly hopes that his petition for a larger Grant of Land will be favorably received.

And Memorialist will ever pray.

To the Right Honorable Earl Bathurst, K.C.B.,

One of His Majesty's Principal Secretaries of State for the Colonies, etc., etc., etc.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 10, per ship Elisabeth; acknowledged by Sir George Murray, 30th August, 1828.)

My Lord,

Sydney, 16th January, 1828.

The failure of the Prosecutions for Libel* in the two instances lately brought against Doctor Wardell has induced me to relinquish for the present any further attempt of this nature.

Prosecution of
R. Wardell
for libel.

It appears the Jury could not agree in their Verdict in either case. In the first, they were discharged on the Foreman stating to the Court that there appeared no probability of their coming to an unanimous Opinion. In the latter, which took place during the subsequent (the last) Term, they were in deliberation

* Note 169.

1828.
16 Jan.

from $\frac{1}{2}$ past 9 o'clock on Saturday night till 12, when they were permitted to separate, and from 10 to 3 o'clock on the Monday following, when they were finally discharged, and the cause was consequently dismissed.

Majority of
jury for
conviction.

I may state here, as it is generally known, that, on both Trials, there was a majority in favour of the Conviction. In the first, it was as five to two. I am not informed of the exact numbers in the case of the second Trial. I was induced to defer reporting on the first Trial, not being able to account for the cause of disunion amongst the Jury, and the second Trial having been put off until the following Term, the result of which I hoped would prove more satisfactory.

Reports on
trials.

I now do myself the honor to transmit a Copy of the Government Notice, on which the alleged Libel was founded, and which subsequently led to the first Trial, which took place in the Supreme Court on the 29th September, as reported in the Sydney Gazette* herewith enclosed; and I beg to refer your Lordship to my Dispatch of the 30th August last, No. 79, forwarding the above "Notice" as explanatory of my reasons for issuing it. I also enclose three other numbers of the Gazette, containing a Report of the last Trial, alluded to, for a Libel in the "Australian" of the 25th May last, contained in a Letter signed "Vox Populi," the last of these Papers giving (in Page 2, Column 4) the Address of Mr. Foster, the Acting Solicitor General, in support of the Prosecution, which had been omitted in the Report.

I have also the honor to enclose the Copy of a Letter from the two Judges on the subject of these prosecutions, written, as it appears, in consequence of an intimation from the Attorney General that it was not intended to proceed with any of the other Informations at present.

Judicial
opinion
on trials.

The Judges are pleased to observe in their Letter that they do not think that the Cases selected for Trial would have been deemed "of sufficient importance to have demanded a State Prosecution in England." It is unnecessary to remark that there is no similarity between a Colony composed as this is and England. What may be indispensable in a confined Society, even though not chiefly composed of Men, who are or have been under the immediate Sentence of the Law, may not be at all necessary in a Community on a large and more extended Scale.

Influence of
Sydney Gazette.

With respect to the Sydney Gazette, the conduct of which it would appear the Judges are of Opinion has had a material influence upon the issue of the late Trials, I cannot do better than transmit for your Lordship's Information the enclosed Copy of my reply to their Letter. I need only add that I am not aware

that any Person belonging to the Government writes for that Paper, which the Judges had some proof of at the last Trial, having permitted both the Colonial Secretary and the Solicitor General to be questioned on this point.

1828.
16 Jan.

The result of these Trials having surprized me, I was induced to call on the Attorney and Solicitor Generals to explain the reasons of the failure of the Prosecutions, and I do myself the honor to forward a Copy of their Report. The other Prosecutions, as I have already stated, were consequently dropped. But I cannot close my Letter without pointing out a circumstance connected with the last Trial, which appears to me fully as strong as any of those noticed by the Attorney and Solicitor Generals, though it is but imperfectly stated in the Postscript of their Letter. Your Lordship will find, on reference to the Leading Article of the Sydney Gazette of the 28th December (Enclosure No. 4, Column 2, Page 2, in the Paragraph beginning with the Words, "During the examination of the Witnesses, etc.") and the fact may be depended on, that the Solicitor General was prevented from referring to the "Australian," in which the alleged Libel of "Vox Populi" appeared, as he was desirous of doing in order, by contrasting that Letter with the Leading Article of the same Paper, to prove that its meaning was ironical, while Doctor Wardell was permitted to refer in his defence to the Sydney Gazette of the 14th December, being nearly *seven Months after the publication of the Libel*, as if any thing, however offensive, which might have occurred after such a lapse of time, could be admitted as a justification, or even in extenuation of the Act with which he was then charged.

Report by
crown law
officers.

Latitude
allowed
defendant
by judges.

I may have attached more importance to this circumstance than it really merits. But it has made a strong impression on my mind; and I confess it does appear to me extraordinary that such a proceeding should have been permitted by the Bench, and that it should not have occurred to the Judges, when pointing out (as stated in the Enclosure No. 6) "the circumstances connected with the late Trials for Libel, which, in their (own) opinion, have had a material influence upon the issue of those Trials," that the great mass of irrelevant matter, which the Defendant was permitted to bring forward (the circumstance for Example as before stated), was not as likely to perplex and mislead the Jury, and have "as material an influence upon the issue of those Trials," as the insensate Remarks of a contemptible Journalist, who it is well known has no further connexion with the Government than being the medium of promulgating its Orders.

I have, &c.,

RA. DARLING.

1828.

16 Jan.

[Enclosure No. 1.]

[*This was a copy of the government notice, dated 30th July, 1827; see page 488.*]

[Enclosures Nos. 2, 3, 4, and 5.]

[*These were copies of the issues* of the "Sydney Gazette," dated 3rd October, 26th and 28th December, 1827, and 2nd January, 1828.*]

[Enclosure No. 6.]

CHIEF JUSTICE FORBES AND JUDGE STEPHEN TO GOVERNOR
DARLING.

Sir,

Sydney, 31st December, 1827.

Observations
by judges on
trials for libel.

The Sittings of the Supreme Court having this day closed, and His Majesty's Attorney General having informed us that it is not his intention to proceed any further at present in the Prosecutions, commenced against the Publishers of the Newspapers, we deem it our duty to lay before Your Excellency certain circumstances connected with the late Trials for Libel, which in our Opinion have had a material influence upon the Issue of those Trials.

Your Excellency is fully apprised of the nature of the Prosecutions, we have alluded to; they were instituted by the Attorney General against Dr. Wardell, the Editor of the Australian, for Libels upon Your Excellency's Government. It is not necessary for us to offer any Opinion upon the offensive character of the publications; but, considering the freedom allowed by Law in animadverting upon Public measures and the latitude which daily usage at least has tolerated, we do not think that the cases selected for prosecution in this Colony would have been deemed of sufficient importance to have demanded a state prosecution in England. We do not mean, however, to infer that the prosecutions were ill advised; on the contrary, we are of opinion that they have already had and will continue to have the effect of lowering the tone of the Press, and of restraining it within the bounds of temperate discussion. Our object in addressing these remarks to Your Excellency is to convey our Opinion that, in whatever point of view the publications themselves may be regarded, the line of conduct pursued by the Sydney Gazette in reference to the Prosecutions, and the unbecoming observations which the Editor has felt himself at liberty to adopt during the whole course from their commencement to their conclusion, had a very improper influence upon the cases before the Court, and were calculated to prejudice the Administration of Justice.

As soon as His Majesty's Attorney General had placed his informations upon the Files of the Supreme Court, the cases were

* Note 169.

brought under the exclusive jurisdiction of the Court; they were at issue between the King and the subject, and a sense of decency, as well as of justice, should have induced the conductor of a Government Paper to abstain from the publication of any remarks, which might prejudice a cause, in which Government was directly the Prosecutor.' Referring to the several Sydney Gazettes, which are numbered in the Margin,* it will be seen that the Editor alludes to the Trials pending before the Court with the most indecent levity. It is impossible to mistake the meaning of his insinuations; they are too systematic and too often repeated to admit of their being ascribed to an occasional indiscretion. In both cases, before the Trial he assumes the guilt, and awards the punishment of the accused; and, as soon as the trials are over, he alludes offensively to the difference of opinion among the Officers composing the Jury, attributes their doubts to the fault of the Judge on the first trial, and on the second, on the very Morning when the Jury were to give their Verdict, published a Paragraph asking them why they should so readily agree in cases of Felony and exercise an anomalous tenderness of conscience in Libels alone? and he directly accuses the Court of adopting a different course of evidence from what he had witnessed on all other occasions. This, we submit to your Excellency, would be going to the extreme verge of allowable License in an Editor opposed to the Administration of Government; but, in a Paper bearing upon its title page an official declaration of its dependence upon Government, it has presented itself to us as an instance of indecorum, not to apply a harsher term, which is without a precedent in our recollection.

1828.
16 Jan.

Criticism of
remarks in
Sydney Gazette.

Upon the general tone of invective, in which the same Paper permits itself to indulge against all persons, whom it may consider to be opposed to your Excellency's administration, it would be improper in us to offer any remark. But we feel it our duty to state the fact that this course of proceeding had a prejudicial effect upon the late Trials, and is calculated in every case to disturb the equilibrium of justice; it places a powerful defence in the hands of persons, accused of Libels upon Government, a defence which it becomes impossible to restrain, and which every attempt to control by the Court only adds to its force and effect upon the Jury.

Alleged
prejudicial
influence of
Sydney Gazette.

In offering these observations to Your Excellency, we are assured that it will be unnecessary for us to guard ourselves against being supposed in the most distant manner to infer that the conduct of the Sydney Gazette has been either guided or countenanced by Your Excellency. But, while that Paper bears

* *Marginal note*.—1353, 1400, 1402, 1407, 1409, 1411, 1415, 1442, 1444 (*see note 170*).

1828.
16 Jan.

Alleged
prejudicial
influence of
Sydney Gazette.

the insignia of official authority,* and is the medium of promulgating the Acts of Government, it were difficult to shut out belief from the Public that the Editor is under the control of Government, and the inference that, if his conduct be not approved, it is at least not restrained. Your Excellency will perceive that it is impossible for the Court to counteract the effect of such an impression upon the minds of a Jury, or to prevent its entering into their deliberations, prejudicing their verdict, and destroying the moral influence of their decisions upon the feelings of the Public.

We have, &c.,

FRANCIS FORBES, Ch. Justice. JOHN STEPHEN, Judge.

[Enclosure No. 7.]

GOVERNOR DARLING TO CHIEF JUSTICE FORBES AND JUDGE STEPHEN.

Gentlemen,

Government House, 4th January, 1828.

Acknowledg-
ment of letter.

I have the honor to acknowledge the receipt of your Letter of the 31st last month, pointing out certain circumstances connected with the late Trials for Libel, which as you state have in your Opinion had a material influence upon the issue of those Trials. As I cannot but consider the issue unfortunate, I must regret that those, who have in any way led to it, have not been made answerable for their conduct. It is not in my power to enter into the merits of the conduct of the *Sydney Gazette*, and I trust your Honors will excuse me for not attempting it. I feel myself, however, called on to correct an Error, into which your Honors appear to have fallen in considering and designating the *Sydney Gazette* as the Government Paper. The passages, to which you have adverted in the number of the *Sydney Gazette*, referred to in your Letter, are, without any further proof, sufficient to secure the Government from any suspicion of being concerned in the conduct of that Paper.

Freedom of
Sydney Gazette
from govern-
ment control.

As to the observations contained in your Letter with respect to the *Sydney Gazette* "bearing upon its title Page an official declaration of its dependance upon Government," it will be seen on reference to that Paper that the "declaration" alluded to is simply to the effect that all public communications, which may appear in it, are to be considered as officially made to those persons to whom they relate. I may add that, in order to divest the *Sydney Gazette* of even the appearance of a Government Paper, as relative to its political Character, the Term "Published by Authority," which it had previously made use of, was discontinued by my desire so far back as the Month of May, 1826. In addition to which, the Editor has taken every opportunity

* Note 171.

of declaring both through the medium of his Paper and otherwise his independence of the Government. As to any occasional attempt to induce a belief that he had obtained information from the Government, I have always considered it merely as a trick of the Trade, and no more entitled to credit than the assertions of the Editors of the "Monitor" and "Australian" that they speak the Sentiments of the Public. I need not add after this that I have no more the power to restrain than a desire to approve the conduct of the Sydney Gazette, or that the Editor of that Paper, who has gratuitously espoused the cause of Government (perhaps from an idea that it would promote the Sale of his Paper, more than writing on the opposite side), is amenable to the same Laws, which he may have violated, in the same degree as the Editors of the Papers, who have made it their business to oppose the Government.

I have, &c.,

RA. DARLING.

[Enclosure No. 8.]

MESSRS. BAXTER AND FOSTER TO GOVERNOR DARLING.

Sir, York Street, Sydney, 29th December, 1827.

Your Excellency having called upon us to state what appears to us to be the reasons of the failure of the prosecutions against Doctor Wardell for publications, which we have all along considered, and still do consider grossly libellous, we feel it our duty, as civil Officers of the Crown, to obey your Excellency's command in this respect, although, in so doing, we may be under the disagreeable necessity of making remarks we could have wished to have avoided.

Report by
law officers on
cause of failure
of prosecutions
against
R. Wardell.

It appears to us then that these prosecutions have failed on the two following grounds. In the first place, that the Defendant was allowed by the Court far too great a latitude in his address to the Jury: and in the second place, that the Law was laid down from the Bench to the Jury much too favourably for the Defendant.

With respect to the first of these grounds, the Defendant on both Trials was permitted to indulge in the most unmeasured language against the Government, and to charge it with having had recourse to the most base and wrongful acts, in order to prejudice his trial. He was also allowed to read extracts from numerous English Newspapers, pamphlets, and publications, for the purpose of shewing that matter of a more libellous nature, than that for which he was being tried, was tolerated in England.

With respect to the second ground, It appears to us that the Bench, in charging the Jury, applied the principle of law, laid down in *Rex v. Lambert* and another, 2 Campbells N.P.C. 403 (that it is competent to any Individual to observe upon or find

1828.
16 Jan.

Report by
law officers on
cause of failure
of prosecutions
against
R. Wardell.

fault with the measures of Government, so long as he does so with decency and without imputing criminal motives) far too favourably for the Defendant. For although the expressions, used by the Defendant in the letter signed "Vox Populi," the subject of the second prosecution against him, were most scornful and contemptuous, and although a great number of most gross insinuations against the Government were crowded together in a few lines, so as to shew clearly that the Defendant's object could not be to discuss fairly any particular measure or measures of the Government, but to bring it into disesteem, still the Court, in charging the Jury, separated each of these insinuations, and told the Jury it was a public measure, and that the Defendant had a right to observe upon it, as long as he did so with decency and without imputing criminal motives; and indeed, as to one sentence in the letter, which actually charged the Governor with an Act of illegal Tyranny and oppression,* the Court told the Jury that, if they believed the assertion of the Defendant that he merely intended to impute error of Judgment and not criminality of intention to the Governor, he was entitled to an acquittal.

On the first Trial, the Court told the Jury that it was not a direct Libel to charge the Government generally with ignorance and obstinacy; and on both trials, not merely the defendant but also the Court told the Jury that they were most delicately situated in regard to their connection with the Government, and that it became them to bring in such a verdict, as a Jury of the Country would be likely to do; which observation appears to us (especially when coming from the Court) calculated to have had an undue weight upon the minds of a Jury, actuated by so nice a sense of Honor as Military Officers.

Under these circumstances, and whilst the Court entertain such sentiments respecting the Law of Libel, as they appear to do at present, it seems to us that it would not be advisable to bring forward any more trials for Libel, unless they are of an excessively gross nature.

We have, &c.,

A. M. BAXTER, Atty. Genl. W. FOSTER, Sol'r Genl.

P.S.—Upon perusing the above, we perceive that we have omitted to observe that, altho' the Defendant was allowed in making his defence to read Extracts from such a variety of Newspapers and other publications, still on the second Trial the Crown Officers were debarred from referring to the leading Article in the very same newspaper, which contained the alleged Libel, and which they were desirous of doing, in order to shew that the

* *Marginal note.*—In the case of Sudds and Thompson.

Letter, signed "Vox Populi" and the subject of the Prosecution, was ironical, and was intended by the Defendant to be understood in a sense directly contrary to its apparent expressed meaning.

1828.
16 Jan.

A.M.B. W.F.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 1, per ship *Mermaid*; acknowledged by Governor Darling, 6th August, 1828.)

Sir, Downing Street, 17 January, 1828.

17 Jan.

I have the honor to acknowledge the receipt of your dispatch, No. 35 of the 27 February last, requesting to be informed whether the measure, which had been adopted by you previously to the arrival of the Instructions of the Lords Commissioners of the Treasury, dated 13 of June, 1826, of issuing notes of £5 and £10 each would, if persevered in, be deemed inconsistent with the 10th Article of the Instructions above alluded to.

Legality of
issue of
commissariat
notes.

Having referred your dispatch for the consideration of the Lords Commissioners of the Treasury, I now transmit for your information and guidance a copy of the reply, which has been received; by which, you will perceive that the 10th Article of the Instructions in question was intended to deprive the Governor of the power of creating debt, and that the 13th Article was not intended to authorize British Silver money to be taken in exchange for Bills upon that Board at any other than the fixed rate. The particular case, in which you would be justified in resorting to the Circulation of Promissory Notes, is also explained; but, should circumstances oblige you to have recourse to this measure, you will take care the moment that the necessity for it ceases by the return of a more abundant metallic circulation that such notes, as may have been issued, are cancelled from time to time in the manner pointed out by the Lords of the Treasury. I am further to desire that Lists may be kept of all such Bills, as may have been issued, as well as of those which may have been cancelled, and that Duplicates of such Lists may be transmitted to the Board of Treasury and may accompany the Commissary's Accounts.

Limited
authority for
issue of notes.

I have, &c.,

W. HUSKISSON.

[Enclosure.]

MR. T. F. LEWIS TO UNDER SECRETARY HAY.

Sir, Treasury Chambers, 15th December, 1827.

Having laid before the Lords Commissioners of His Majesty's Treasury your letter of 26th July last, enclosing Copy of a Dispatch from the Governor of New South Wales, reporting

1828.
17 Jan.

Treasury
instructions
re issue of
commissariat
notes.

that he had withdrawn from circulation the paper Money, which had been issued on the part of Government, I have it in command to acquaint you, for the information of Mr. Secretary Huskisson, that the 10th Article of the Instructions to the Governor of New South Wales prohibiting the Creation or issue of Paper Money was intended to deprive him of the Power of creating Debt, and the 13th Article of those Instructions in regard to the negotiation of Bills was not intended to authorize British Silver Money to be taken in Exchange for Bills upon this Board at any other than the fixed rate, which is now reduced to £101 10s. 0d. in Silver for a Bill for £100. If the British Money is returned in exchange for Bills upon this Board at the fixed Rate, in sufficient quantities for carrying on the public expenditure, it cannot be necessary to resort to the circulation of Promissory Notes; but, if this should not be the Case, My Lords would not object to the Governor placing at the disposal of the Commissary a limited Amount of Promissory Notes of the description of that accompanying his letter, such notes to be in no case in less Sums than £5, and to be at all times exchangeable for Bills upon this Board at the same Rate as British Silver. This arrangement will prevent their being issued in excess, and will also probably render it unnecessary to resort at any time to the issue of Dollars or other Foreign Coin in the payments becoming due on account of the Public Expenditure; and My Lords will take care to cause British Silver Money to be from time to time sent to New South Wales, so long as the necessity of occasionally resorting to the issue of Notes may continue, which necessity will clearly indicate an insufficiency of Metallic Circulation for carrying on the ordinary concerns of the Colony. But, whenever the return of British Silver Money into the Chest may be so regular and abundant as to render it unnecessary to continue the issue of Promissory Notes, the Governor should be instructed to cause such Promissory Notes from time to time (as they are paid into the Military Chest in exchange for Bills) to be cancelled, in the presence of a Board to be constituted by the Governor for that purpose; and accurate Lists should be kept of all Bills issued and cancelled, and Duplicates of which Lists should be from time to time transmitted to this Board and also accompany the Commissary's Accounts; and I am to request, if Mr. Huskisson sees no objection to this arrangement, that instructions may be conveyed to the Governor of New South Wales accordingly.

I am, &c.,

T. FRANKLAND LEWIS.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

1828.
18 Jan.(Despatch No. 2. per ship *Mermaid*.)

Sir,

Downing Street, 18 January, 1828.

I have received your dispatch of the 24 July last, in which you report the arrangements, which you have made in regard to the appropriation of certain Buildings to the use of the Public Offices alluded to therein. You have not informed me of the expence, which will attend the carrying these arrangements into effect; but, as you state "that it has not exceeded what was necessary to complete the Building in the Barrack Square and the New Police Office, which you found in an unfinished state, and if longer neglected would have fallen to ruin," I shall not object to the measure, which you have adopted; and I have therefore to signify to you His Majesty's approbation of the same.

Approval of
arrangements
for public
offices.

I take this opportunity of desiring that no expence shall in future be incurred, whether for the construction of new Buildings or the repair or alterations of others (in such cases at least in which you would consider it your duty under the Instructions, which you have already received, to send home a report upon the subject) without transmitting with your dispatch an Estimate of the expence which would be occasioned thereby to the public.

I have, &c.,

W. HUSKISSON.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch marked "Private," per ship *Elisabeth*; acknowledged by Sir George Murray, 30th August, 1828.)

My dear Sir,

Sydney, 19th January, 1828.

19 Jan.

In acknowledging your private Letter of the 26th September, 1826, expressing a wish that Mr. Francis Stephen should be appointed Prothonotary of the Supreme Court, or be employed in some other eligible Situation under the Government, I trust I need not assure you that I have felt fully disposed to attend to the interests of that Gentleman. I, however, soon perceived that he was disposed to take a lead in matters, to which neither his Years nor his Situation appeared to give him any pretension; and I, therefore, thought it advisable to delay employing him, until I should find an improvement in this respect. In the mean time, however, Mr. Forbes, who appears to have adopted him as a Protégée, brought him forward for an Appointment in the Supreme Court under the new Arrangement, and I acquiesced in his nomination. But, before the Arrangement was finally concluded, the Salary of his Appointment not having been then fixed, I received a communication from Colonel Lindesay,

Proposed
employment of
F. Stephen.

His conduct.

1828.
19 Jan.

Protests of
F. Stephen
and W. C.
Wentworth
against action
of sentry.

the Commandant of the Garrison, with a Letter from Mr. Francis Stephen, of which the enclosed is a Copy. I need not express my surprise at the receipt of such a Letter from a Son and Brother of Gentlemen* holding Offices under the Government, and who was himself at the moment an Applicant for Employment. It is certainly not a very favorable earnest of his disposition towards the Government. It is well known that it is usual for Sentries to challenge Persons approaching their Posts after Tattoo Beating; and where can the strict observance of this practice be more necessary than in a Population like that of Sydney, chiefly composed of Convicts. But I was the more struck with this proceeding on the part of Mr. Francis Stephen, having received a similar Letter a few days previous from Mr. Wentworth, a Copy of which I enclose, as likewise of the Report of the Officer on duty. I was certainly not much surprized to find that Mr. Wentworth was not disposed to brook so gross a violation of the constitution, though I am unable to account for the feeling of Radicalism, which this proceeding betrays in Mr. Francis Stephen. Mr. Wentworth is now proceeding in the Court of Quarter Sessions against the Sentry, and I conclude we may prepare for the result, which is usually experienced, when Government is concerned.

Appointment of
F. Stephen as
clerk in
supreme court.

It was my intention, on being informed of this circumstance, to have objected to the Appointment of Mr. Francis Stephen; and I wrote to the Chief Justice accordingly; but, as it had already taken place, as will be seen by the enclosed correspondence, I was unwilling to take any further step in the matter.

Sentry posted in
neighbourhood
of house of
chief justice.

Though it cannot be necessary to enter into any Explanation of the Circumstance of Sentries, posted for the protection of public Buildings or for the preservation of good Order and Tranquillity, I am induced to state the object of posting the Sentry in the immediate Neighbourhood of the Chief Justice's, by whom the Gentlemen in question, Mr. W. C. Wentworth and Mr. F. Stephen, were challenged and detained in disputing the Authority of the Sentry to question them.

I observed, some time after my arrival, that a Number of Watchmen and Constables were kept at a considerable expence for the purpose of protecting the different public Buildings and Offices, and that not less than *five* or *Six* of these Persons were employed at the Houses of the Chief Justice, the Colonial Secretary, and the Treasury, which were contiguous to each other. I suggested that a Sentry, placed so as to have the three Buildings under his view, would perhaps afford more effectual Security than the whole of the Watchmen, who generally speaking are men not much to be depended upon. The Chief Justice, whom I

* Note 172.

more particularly consulted, fully agreed, and the Arrangement was ordered. As the Records of the Supreme Court were kept at his Residence, the Court House not being completed, the Sentry received Orders to watch the Premises with more than ordinary care. And it is for the due performance of their duty and the exertions, which have been so successfully used to preserve the good Order and Tranquillity of the Town at night, that the Troops are to be arraigned, when a proper and becoming feeling on the part of Messieurs Wentworth and Stephen would have satisfied them that the Men deserved praise rather than censure for the manner, in which they discharged their duty.

1828.
19 Jan.

Sentry posted in
neighbourhood
of house of
chief justice.

This is a full Statement of the Cases, to which I have only to add that I have myself enquired particularly into the circumstances, and have not discovered that there was any thing reprehensible in the Conduct of the Sentries. I am satisfied the Men had no intention of insulting either Mr. Wentworth or Mr. Francis Stephen. In the Case of the latter, the Sentry told him, if the Governor himself was passing, he would challenge him, and he was sure the Governor would answer and not dispute his Authority. The occurrence itself is of no importance; the mischief is that persons, from whom better things might be expected, copy such Men as Wentworth, and permit themselves to be infected by feelings of radicalism and hostility to the established Government.

Report on
conduct of
sentries.

I remain, &c.,

RA. DARLING.

[Enclosure No. 1.]

MR. FRANCIS STEPHEN TO COLONEL LINDESAY.

Sir, Ultimo House, Saturday, 29th December, 1827.

I have the honor to request that I may be furnished with the Name of a Man of the 39th Regiment, who stood Sentry at the back of Mr. McLeay's Residence on Friday (yesterday) Evening at 11 o'Clock.

Request for
name of sentry
by F. Stephen.

I neglected to answer his Challenge, when at a considerable distance, it being as light as day, and I was in consequence *Illegally arrested* and *assaulted*; as the Man's manner was peculiarly uncivil, it is my *present* intention to prosecute him in the Courts of Justice of this Colony.

I have, &c.,

FRANCIS STEPHEN.

[Enclosure No. 2.]

MR. W. C. WENTWORTH TO GOVERNOR DARLING.

Sir, George Street, 19th December, 1827.

I have the honor to acquaint Your Excellency that, in consequence of my questioning the right of the Sentry, who is stationed in the Night time at the back of the Residence of the

1828.
19 Janr

Request of
W. C. Went-
worth for names
of military
concerned in
his detention.

Colonial Secretary, to challenge any of His Majesty's Subjects, who may be quietly walking the Streets, I was forcibly detained by him on Sunday night last about half past nine o'Clock, and kept a Prisoner in his Box for about 15 Minutes, until I was released by order of the Serjeant of the Guard. I have no doubt that the Sentry, in offering me this violence, only acted in obedience to the order, which he received from some superior Officer; but I feel equally certain that no superior Officer of his has any right in Law to issue an order, by which the personal liberty of His Majesty's Subjects here may be thus wantonly outraged. As it is my intention to bring this matter before a Tribunal, competent to determine a question of such Vital importance to the Colonists at large, I have to request of Your Excellency, as Commander in Chief of His Majesty's Forces here, that the Names of the Sentry who detained me, the Serjeant who liberated me, and the Officer or other Person who issued the order, upon which the Sentry acted, may be transmitted to me, in order that I may prefer an Indictment against them at the next Quarter Sessions of the Peace for the false Imprisonment above mentioned. I have, &c.,

W. C. WENTWORTH.

[Enclosure No. 3.]

LIEUTENANT OVENS TO COLONEL LINDESAY.

Sir,

Sydney, 17th December, 1827.

Report by
officer of guard
on detention of
W. C. Went-
worth by sentry.

As acting Captain of the day, I have the honor to enclose the Garrison Guard Reports, and to state that I visited the different Guards at from 2 to 4 o'Clock by day, and at from 10 till $\frac{1}{2}$ past 11 by Night, found them present and alert.

The following circumstances were reported to me by 3 Individuals of the Governor's Guard and a Civilian residing in Judge Forbes's House.

Private Charles Lynch of the 39th Regiment states that he was posted on Sunday night, the 16th Instant, at 8 o'Clock on No. 4 Post with the following orders: to walk on the Road between the entrance of Judge Forbes's Yard and the Colonial Secretary's; to go into each Yard every quarter of an hour, and to call out "*all's well*" every half Hour; to challenge every Person approaching his post after 9 o'clock; to allow no Bundles to leave either Yard without being inspected; to see that no improper Persons are loitering about his Post; to prevent any Persons from going into either Yard excepting the People of the House; that he (Private Charles Lynch) about $\frac{1}{2}$ past 9 o'clock challenged a person approaching his Post (in or about 20 Yards off), who made no Answer; when he challenged a second

time, he then answered "Friend"; Sentry told him to "*Pass Friend*"; when on getting close to his Post, he stopped and told him he had no authority to challenge him. Sentry said he had, and, if he would say so again, he would make him Prisoner. The Person then told him if his officer gave him such orders, he was all wrong. Sentry then told him to go about his business; when he replied, he would go and report the circumstance to the Judge, and when he observed him going into the Gate leading to the Yard, Sentry took him Prisoner and kept him in Custody till the Serjeant arrived at the Post.

Corporal Jones, 39th Regt., states he posted Private Charles Lynch on No. 4 Post, and delivered him the above verbal Orders, which he stated as above.

Serjeant Thomas Joice, 57th Regiment, states, He had charge of the Governor's Guard on Sunday Night, the 16th Instant, when about $\frac{1}{2}$ past 9 o'clock a Man came to the Guard and informed him that the Sentry, in rear of Judge Forbes's House, had taken a Gentleman into custody, and believed the Gentleman was a little intoxicated, notwithstanding that he (the Man) considered the Sentry did no more than his duty; the Serjeant then called a Man of the Guard, and proceeded to where the Sentry was posted; on perceiving a Gentleman in the Sentry Box, he (the Serjeant) desired him to come out, and asked who he was; he answered he was Mr. Wentworth; the Serjeant then turned to the Man who came to the Guard, and asked if he was Mr. Wentworth, the Attorney, who said yes; when Mr. Wentworth replied, he was no Attorney, that he was Mr. Wentworth, the Barrister; the Serjeant ordered the Soldier, who accompanied him, to take Mr. Wentworth to the Watch House, when he said he would go against his will; on the Serjeant consulting with the Man, who apprized him first of the circumstances, and on a second consideration, permitted him to go away, but said he would report it to the Captain of the day. Mr. Wentworth said he would find the Sentry out in the Morning.

Mr. John Gilchrist, residing at Judge Forbes's, states that, about $\frac{3}{4}$ past 9 o'clock last night (the 16th Instant), one of Judge Forbes's Servants came to him and requested of him to come out and speak to the Sentry, who told him the offence he had received from the person, whom he had confined, and said he could not release him, without reporting it to the Serjeant of the Guard. Mr. Gilchrist went immediately to the Serjeant of the Guard, and related to him the circumstance, not naming the Individual who had been confined; the Serjeant with a Soldier proceeded to the Sentry, and, on enquiring into the circumstances and hearing of Mr. Wentworth's Name, gave orders to

1828,
19 Jan.

Report by
officer of guard
on detention of
W. C. Went-
worth by sentry.

1828.
19 Jan.

Report by
officer of guard
on detention of
W. C. Went-
worth by sentry.

the Soldier, who accompanied him, to take him to the Watch House; the Soldier was about to obey him, when he (Mr. Gilchrist) called the Serjeant to one side, and represented to him that he thought he was about to do an improper act, as this Gentleman was known to be at variance with the Government; that it might appear an Act of Military oppression towards him; and that the Serjeant might incur the displeasure of His Officers and the Governor; the Serjeant seemed to acquiesce in his views and permitted him to go. Mr. Wentworth then, on going away, said he would find the Sentry in the Morning, alluding to the time he was confined against his will, and asked the Serjeant if he could then go, and then went off.

Mr. Gilchrist mentioned to the Serjeant, when at the Guard, that he thought the Gentleman in Confinement had been overheated with Wine or words to that effect.

The Sentry said in Mr. Gilchrist's hearing that, on Challenging Mr. Wentworth, he answered; but, on coming near his Post, he stopped and told the Sentry he had no business to ask such a question; the Sentry told him it was his orders; to which Mr. Wentworth replied, Your Officer may have told you so, but he is wrong; this Mr. Wentworth admitted to be a correct Statement in Mr. Gilchrist's presence.

I have, &c.,

J. OVENS, Lieut., 57th Regiment,
Actg. Captain of the day.

[Enclosure No. 4.]

GOVERNOR DARLING TO CHIEF JUSTICE FORBES.

Sir, Government House, 1st January, 1828.

Salaries
approved.

I have the honor to acknowledge the receipt of your Letter of the 28th Ultimo* respecting the Salaries to be affixed to the Situations of the Chief and 2nd Clerks of the Supreme Court under the arrangements proposed for the discontinuance of the Office of Master of the Court; and I beg to acquaint you that I approve of the Amount of the Salary proposed for the Chief Clerk; but, as a circumstance has come to my knowledge since the date of my former Letter, which appears to me to render Mr. Francis Stephen's employment objectionable, I do not consider that I can with propriety authorize the issue of any Salary to that Gentleman and therefore suggest that he may not be appointed.

Objections to
appointment
of F. Stephen.

I have, &c.,

RA. DARLING.

* Note 174.

[Enclosure No. 5.]

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

1828.
19 Jan.

Sir,

Emu Plains, 5th January, 1828.

I have the honor to acknowledge Your Excellency's Letter of the 1st Instant, which I received on the Evening of the 3rd. I have not the means at present of referring to dates, but, upon the receipt of Your Excellency's Letter some time last month, expressing a willingness to give effect to the arrangements I had proposed relative to the Ministerial Officers of the Supreme Court, I nominated Mr. Stephen to the Office, which had become vacant by the removal of Mr. Moore, and Mr. Stephen in consequence attended the Office of the Court with the view of acquiring the necessary knowledge of its duties, and with the understanding that his Salary should commence on the first of the New Year. Mr. Justice Stephen was made acquainted with the appointment of his Son and approved of his accepting it.

Appointment of
F. Stephen as
clerk in
supreme court.

Under these circumstances, Your Excellency will perceive that, in order to comply with your suggestion, I must remove Mr. Stephen from an Office, which he had already entered upon, before I received your Letter; and I am sure Your Excellency will feel the justice of putting me in possession of the circumstance, to which your Letter only alludes, as having rendered Mr. Stephen's employment objectionable, and enabling me to give a satisfactory reason to his Father and his Friends for the act, which Your Excellency requires of me, An Act which must have the unavoidable consequence of prejudicing the future prospects of a Young Gentleman just entering Life, and of causing much pain to his highly respectable family.

I have, &c..

FRANCIS FORBES.

[Enclosure No. 6.]

GOVERNOR DARLING TO CHIEF JUSTICE FORBES.

Sir,

Government House, 9th January, 1828.

I had the honor to receive your Letter of the 3rd instant last night, and beg leave to enclose a Copy of a Letter, addressed by Mr. F. Stephen to the Commandant of the Garrison of Sydney, which will explain the circumstance alluded to in my former Letter. As it appears his appointment has already taken place, I shall not object to the Issue of the Salary you have recommended, though it is impossible not to see that the spirit, evinced by Mr. Francis Stephen, is totally inconsistent with that feeling, which ought to have influenced a Person holding or applying for employment under the Government, as Mr. F. Stephen was at the time.

Withdrawal of
objections to
appointment.

I have, &c.,

RA. DARLING.

1828.
20 Jan.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 7, per ship Mermaid.)

Sir,

Downing Street, 20th January, 1828.

Despatch *re*
Western port
acknowledged.

I have received your Dispatch, marked "separate" of the 6th of April last, enclosing the Copy of a Report, addressed to you by Mr. Hovell, the person mentioned in Your Dispatch No. 15, who had been left at Western Port for the purpose of exploring the Country inland to a greater distance than had been done by Captains Wetherall and Wright, who were sent in charge of the expedition, by which the Settlement was established.

Disapproval of
opinion *re*
inexpediency of
settlement.

From the additional information, which Mr. Hovell has been enabled to communicate in his Report, I am not disposed to adopt the opinion, which you have expressed in your Dispatch, "that Western Port does not possess the necessary requisites for a Settlement," nor do I think that its local circumstances are such as to render its farther occupation inexpedient. Although in the immediate Neighbourhood of the Bay the whole of the surrounding Country may not possess so rich a Soil, as might be desired, yet it is evident that the further from the shore the richer the Land becomes; indeed there appears but little doubt that, at the distance of 30 or 40 miles, the Country is as fine as any part now occupied; nor does it appear that the scarcity of water is such as to render this an insurmountable obstacle to the prosecution of grazing and agricultural operations.

Settlement to
be maintained.

Exclusive, however, of every other consideration, the situation of Western Port is so important with reference to Van Diemen's Land, from being in immediate communication with some of the establishments there, as well as with the Territory already occupied South of Sydney, with which it would in a very few years form a connecting link, that I am inclined to continue the Settlement at Western Port for the present at least, in order that every trial may be made of its capabilities for Colonization before it is finally abandoned; and I, therefore, hope that you may not have taken any steps in consequence of Lord Goderich's Dispatch of the 19th of July last, for withdrawing the establishment from thence.

You will of course take the necessary measures for supplying the persons, who have already proceeded to Western Port, with such further Articles of Provisions, etc., as you may consider they will require; and you will take that opportunity of facilitating the conveyance of any additional number of Settlers as may feel disposed to join the present Establishment there.

I have, &c.,

W. HUSKISSON.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 3, per ship Mermaid.)

1828.
23 Jan.

Sir,

Downing Street, 23rd January, 1828.

A Petition has been received at this Department from John Carter, a Convict in the Colony under your Government, praying a remission of his Sentence, and I have to desire that you will inform the Petitioner that His Majesty's Government see no ground for interfering in his case.

Refusal of
petition of
J. Carter.

I have, &c.,

W. HUSKISSON.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 4, per ship Mermaid.)

Sir,

Downing Street, 24th January, 1828.

24 Jan.

I have received your Dispatch No. 75 of the 23rd of July last, stating that you had been induced, from the exigencies of the Service, to avail yourself of the assistance of Lieut't Bowen of the 39th Regiment, whom you have appointed to the Surveyor General's Department with a Salary of £250 per annum.

Confirmation of
appointment of
G. M. Bowen as
assist. surveyor.

I have much pleasure in confirming this officer in the appointment, which you have bestowed upon him; but, as the persons, who were previously appointed from home to fill similar situations, would have just grounds of complaint, were I to grant precedence to Lieut't Bowen before those Gentlemen, I am under the necessity of declining to comply with that part of your request in his favor.

I have, &c.,

W. HUSKISSON.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 5, per ship Mermaid.)

Sir,

Downing Street, 24th January, 1828.

I have received your Dispatch No. 81 of the 4th of August, enclosing a letter from Col'l Stewart, requesting that the Forage Allowance, which he had received as Lieut't Governor, and which by Lord Bathurst's Instructions he was called upon to refund, may be issued to him until the end of the Year 1826; and I have to acquaint you in reply that I do not feel at liberty to sanction a payment, to which the late Secretary of State decided after mature consideration that Colonel Stewart was not entitled.

Forage
allowance to be
refunded by
W. Stewart.

I have, &c.,

W. HUSKISSON.

1828.
24 Jan.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 11, per ship Elisabeth; acknowledged by Sir George Murray, 8th September, 1828.)

My Lord,

Sydney, 24th January, 1828.

Correspondence
with judges re
eligibility of
expires as
jurors.

In communicating to your Lordship the accompanying correspondence, which has passed between the two Judges and myself, respecting the eligibility of attainted Felons, who have served the period of their Sentence but have not received a *free pardon*, as Jurors, I beg to refer your Lordship to the Copy of the Minute of Proceedings* of the Executive Council, which was forwarded with my Despatch, dated the 1st of January, 1827, No. 1, as my reason for supposing that Persons of the Description alluded to were not eligible.

Being informed that the Jury impanelled for the late Trials by the Quarter Sessions was composed of persons of the above description, and were besides totally unqualified to discharge the duties of Jurors, I conceived it proper, after consulting the Attorney General, to write to the two Judges on the subject, in order that the matter should be put at rest, as the most serious evils might result from it, should it hereafter appear that the Jury was not legally constituted.

Having entered into this explanation of my reason for mooted the question, I need only add that, if the Chief Justice had informed me at the time, when he found reason to change his opinion (as expressed in the Minute of Council above referred to, which, as is stated in Enclosure No. 3, he drew up himself) and which I conceive ought to have been communicated to your Lordship's Predecessor, as the Minute of Council, containing a contrary opinion, had previously been, I should then have apprized Earl Bathurst of the erroneous view, which appeared to have been taken of the Case, though I trust no inconvenience has resulted from my not having done so.

I do myself the honor to enclose the Sydney Gazette† of the 23rd January, 1828, and request your Lordship will be pleased to refer to the Report of the Trials by the Quarter Sessions in Page 3, Column 2, which may be useful, as it will enable your Lordship to judge in some degree how far the Colony would be likely to benefit by Trial by Jury, if generally introduced.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

GOVERNOR DARLING TO CHIEF JUSTICE FORBES AND JUDGE STEPHEN.

Gentlemen,

Government House, 18th January, 1828.

It has been stated to me that the Court of Quarter Sessions is now proceeding in the Trials of Cases by a Jury,

* Note 175. † Note 176.

composed of Persons whom it is considered are not eligible to serve as Jurors, not having received a *free pardon*. I am, therefore, induced to submit the case for your consideration and opinion, as, under the circumstances stated, I presume the Trials would be invalid, and the most serious inconvenience and injury might be the consequence. It is perhaps unnecessary for me to enter further into the subject in this place, as the Chief Justice will recollect the Proceedings, which took place upon it in the Executive Council in the month of August, 1826, in consequence of a reference from the Secretary of State with respect to the introduction of a modified System of Trial by Jury in this Colony.

The circumstance of the Trials now pending appears to render it important that the Question should at once be determined, and that it should be declared whether attainted Felons, who have served the period of their Transportation, not having received a *free pardon*, are eligible under the existing Laws to serve as Jurors; and I request to be furnished with your opinion accordingly.

I have, &c.,

RA. DARLING.

[Enclosure No. 2.]

CHIEF JUSTICE FORBES AND JUDGE STEPHEN TO GOVERNOR
DARLING.

Sir, New South Wales, 19th January, 1828.

We have the honor to acknowledge the receipt of your Excellency's letter of yesterday's date, requesting to be furnished with our opinion whether attainted Felons, who have served the terms of their Transportation but have not received a free pardon, are eligible as Jurors. We beg leave to state to your Excellency that, in our opinion, it will be the more safe course to let the Justices in Sessions determine the Question, if it should be raised, or to proceed, if it should not be raised, in such manner as they deem legal and proper, and then their proceedings may be removed into the Supreme Court and the question finally determined. Our reasons for recommending this course are, because any opinion of ours conveyed to your Excellency, would be extra-judicial and would be no further an Authority for the Court of Sessions than the Justices might think fit to adopt it, nor binding upon the parties prosecuting or defending any cause in that Court. And, as we may be called upon to determine the point upon the Bench, your Excellency will perceive the inconvenience, which may be occasioned by giving our opinion upon it before it comes to be argued and finally decided by the Court.

As we have been at all times anxious to furnish the Justices of the Colony with our opinions, where we could safely do so,

1828.
24 Jan.

Request for
opinion of
judges re status
of expirees
as jurors.

Refusal of
judges to give
extra-judicial
opinion.

1828.
24 Jan.

Refusal of
judges to give
extra-judicial
opinion.

we have professed our readiness to give the greatest latitude and facilities to all modes of resorting from the Sessions to the Superior Courts, adopted by the practice in England; and we shall be willing to receive a special case stated from the Justices.

But we think that the course, we have already suggested to your Excellency, will be in every point of view the simplest and most conclusive.

We have, &c.,

FRANCIS FORBES. JOHN STEPHEN.

[Enclosure No. 3.]

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

(Letter endorsed "Private Official.")

Sir,

Emu Plains, 19th January, 1828.

Opinion of
F. Forbes *re*
eligibility of
expirees as
jurors.

As your Excellency's letter of yesterday, addressed to Mr. Stephen and myself, alludes to the proceedings in Council, which took place in August, 1826, it may be proper to state that I think the view, taken by the Council in the report (drawn by myself), was too narrow, and that persons, who have served their Terms of Transportation, are eligible as Jurors.

Your Excellency will probably recollect that, when the subject was first mentioned, I stated in general terms that Mr. Peel's Act had declared all persons, who had either served their Terms or received the King's pardon, competent as Jurors; one of the members of the Council, I forget which, stated that he thought there was a difference between the two classes of persons, and that Expirees were not included; the Act was sent for, and, as it then appeared to me, only applied to persons who had received the King's pardon. Under this impression, I drafted the Report, which was afterwards adopted by the Council. Some months after the Report had been transmitted, I had occasion to turn to the Act 4 Geo. 1st (relating to Transportation) and I found a *marginal note*, made by myself when I first got the Copy of Mr. Peel's new Jury Bill, by which I found that I had then entertained an Opinion that, by the force of that Act and the declaratory form of Mr. Peel's Bill, expirees were placed upon the same footing as pardoned persons. I then perceived that the opinion, I first expressed in Council, was given advisedly, altho' I had forgotten the grounds upon which I had formed it. In this State of the Question, I saw in one of the Sydney Papers an abstract of another Bill of Mr. Peel's, in which some provision was introduced, relative to the case of persons having served their periods of Transportation and their subsequent abilities; and I have kept my mind open to any light, which this last Bill, if enacted into Law, might bring with it. But, as the law

now stands, I incline to think that expirees are eligible to serve on Juries. I think the following is a pretty correct preeis of the Law.

1st. Be it enacted and *declared* that no person, who has been convicted of felony or other infamous crime, shall be capable of being a juror (except he have received the King's free pardon) etc.

5th or 7th Geo. 4, Mr. Peel's Jury Act.

2nd. Be it enacted that all persons, who have been transported by Order of Court, and shall have served their Terms agreeably to order of such Court, shall be restored to all rights and abilities in same manner as if they had received the King's pardon.

4th Geo. 1st, Transportation Act.

The first mentioned Act, being *declaratory*, leaves the law, as if it had been so enacted in the first eras of Parliament; and the second Act, giving to expirees the same abilities as they could have enjoyed by virtue of the King's pardon, places both classes upon the same footing.

It may be as well to mention that the late Attorney General (Bannister) attempts to make a distinction between *free* and other pardons; but this distinction is fanciful and entirely without any legal foundation. The books only mention two kinds of pardon, *absolute* and *conditional*. In common parlance, they are called free and conditional; and the Statute merely adopts the vernacular form of expression. Conditional pardons in this Colony (that is, pardons limited to continuance in New South Wales) are expressly made by Statute of equal effect with absolute pardons in England, while the parties reside within the Colony.

I have, &c.,

FRANCIS FORBES.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 6, per ship Mermaid.)

Sir,

Downing Street, 28th January, 1828.

28 Jan.

His Majesty's Government have given their fullest attention to the Report of Captain Stirling, transmitted in your Dispatch No. 56 of the 21st of April last, respecting Swan River, situated in the North Western Coast of New Holland, to which place he had proceeded with the view of ascertaining whether this situation was as eligible for a Settlement as was supposed.

It is evident, from the result of Captain Stirling's examination, that many of the advantages required for a Settlement exist in the neighbourhood of that River; but, on the other hand, the great distance of this part of the Coast from Sydney and the uncertainty at all times of the Passage through Basses' Strait

1828.
24 Jan.

Opinion of
F. Forbes re
eligibility of
expirees as
jurors.

Report on
Swan river
acknowledged.

Objections to
proposed
settlement.

1828.
28 Jan.

appears to render it extremely difficult to form and keep up an establishment there, as it cannot be viewed as a dependance upon the present Colony, but wholly in the light of a new one, almost as much separated from New South Wales as it would be from England, and consequently requiring, if formed, all the machinery of a distinct Government.

Decision against
foundation of
settlement.

Under these circumstances, I am of opinion that it would be inexpedient, on the score of expense, to occupy this part of the Coast, and that it is unnecessary, with a view to any urgent Interest, to attempt any new Settlement at present in that quarter, especially as Captain Stirling's anticipation of a Commercial Intercourse with India, or as a place to which Europeans resident in India would be disposed to repair to recruit their health, etc., are not likely to be realized from the dangers, which surround the whole range of the Western Coast, not excepting even that part of it in question, and which would naturally induce Ships bound to India to avoid rather than to wish to approach it.

I shall not fail, however, to apprise the East India Company of the circumstances attending the discovery of Swan River, in case they should consider it advisable to make any Settlement there; but I am not aware of any sufficient motive to induce them to embark in an undertaking of this nature.

I have, &c.,

W. HUSKISSON.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 8, per ship Mermaid; acknowledged by Governor Darling, 15th August, 1828.)

30 Jan.

Sir,

Downing Street, 30th January, 1828.

Despatch
acknowledged.

I have received your Dispatch of the 25th of May last, transmitting the Report of Mr. Busby and the other persons, who have been called upon to give their opinions, as to the best means of introducing Water into the Town of Sydney, together with Estimates of the expense which would attend this measure.

Loan proposed
for water
supply.

It is proposed in your Dispatch to defray the expenses of the Work by means of a Loan, and to establish a Sinking Fund of £700 for the liquidation of the debt, after paying 4 per Cent. on the amount to be raised, a proposition which seems to have originated in the suggestion of the late Secretary of State.

Private
company
proposed in
preference.

I have now to acquaint you that a further consideration of the subject has induced His Majesty's Government to desire rather to place this undertaking in the hands of a Private Company, to be formed in the Colony, than to carry it into effect by means of a Loan contracted on the part of the local Government.

From the general convenience, which would result to the inhabitants of Sydney from obtaining at all times of the Year regular Supplies of Water, there can be little doubt as to their willingness to contribute a small annual payment in return for such an advantage; and it is, therefore, not unreasonable to suppose that Individuals will be found ready to come forward with funds for the purpose of carrying into effect a work, which is likely to produce so considerable a source of profit hereafter to the persons who may engage in it.

You will accordingly bring this subject without loss of time before the Council of your Government, with a view to the consideration of the best means of giving effect to the measure in contemplation. But, in whatever manner the details may be regulated, it appears to be desirable that, in the agreement which may be entered into on the part of Government with the Individuals composing the Company, a restriction to the following effect should be imposed, vizt. That, whenever their profits should exceed double the rate of Interest usually paid in the Colony, or such other amount to which it may be considered advisable to limit their profits, the terms on which the Supplies of Water may be delivered to the Inhabitants should be lowered in proportion, it being essential that the public should not be called upon to pay a heavier tax upon the consumption of that most indispensable article of life, than may be adequate to afford a fair remuneration to the persons who may have embarked their Capital in the undertaking, and in proportion to the risk which they may have incurred. And I should also suggest that the Government should retain to itself the right (to be exercised at its own discretion) of taking the management of the works into its own hands after a given time, to be specified, repaying however in that case to the Company the Sum, which may have been originally expended by them, together with such Monies as they may have bona fide laid out since the completion of the undertaking, provided no part thereof has been defrayed out of the profits, over and above the amount which it is proposed that the Company should be permitted to receive. I have, &c.,

W. HUSKISSON.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 9, per ship Mermaid.)

Sir,

Downing Street, 30th January, 1828.

I have the Honor to acknowledge the receipt of your Despatch No. 60 of the 3rd of May last, reporting the measures which you had adopted, in compliance with your Instructions, for

1828.
30 Jan.

Prospects of
private
company.

Conditions to
be imposed on
company for
supply of water.

Despatch
acknowledged.

1828.
30 Jan.

Prospects of
settlements at
King George's
sound and
Swan river.

forming a Settlement at King George's Sound, and enclosing the Copy of a Letter from Major Lockyer, who was sent in charge of the expedition, containing a Report of his Proceedings.

The reasons, which have influenced His Majesty's Government in deciding not to occupy the Country in the Neighbourhood of Swan River, will probably induce them to decide hereafter upon withdrawing altogether the Establishment, which has been formed at King George's Sound. If, however, it were to be deemed advisable, contrary to my present opinion, to continue this Establishment, there cannot be a doubt that it would also be desirable to keep up another at Swan River, the intervening Country being generally good and the fine plains, which stretch along the front of the continuous range of blue mountains, affording the means of supporting a very numerous population, which, proceeding, the one part from the South Northerly, the other from the North Southerly, would speedily be united and form an extensive and valuable Settlement, tho' wholly isolated, and, as I observed in my former Dispatch, requiring all the Machinery of an independant Colony to govern it.

Final
instructions
withheld.

Having, as I informed you I should in my Dispatch of the 20th instant, addressed a Communication to the East India Company to ascertain whether any disposition exists on their part to undertake the Colonization of the part of the Coast, to which I am alluding, from India, I shall defer giving you any final Instructions in regard to the Settlement at King George's Sound, until I am in possession of the sentiments of the Company upon the proposition, which has been made to them; and you will in the mean time take no steps for removing the Establishment, taking care, however, that the necessary articles of provisions, etc., are forwarded to the Settlement, should you entertain any apprehension that the stock, which they took with them from Sydney, will not be sufficient to hold out without being further replenished.

I have, &c.,

W. HUSKISSON.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 10, per ship *Mermaid*; acknowledged by Governor Darling, 30th August, 1828.)

Sir,

Downing Street, 30th January, 1828.

Division of
colonial
establishment.

With reference to Lord Goderich's Dispatch of the 30th of July last, relative to the division proposed to be made in the Establishment of New South Wales, and to the arrangement suggested for defraying out of the Colonial Revenues the charges of so much of the Civil Establishment, as relates to the government and management of that Colony, *exclusive* of the charges

incident to its character as a Penal Settlement, and for defraying, out of Funds to be provided by this Country, the charges of the Establishment connected with its character of a penal Settlement, I have to acquaint you that, with a view of keeping entirely distinct those branches of expenditure, which it is proposed to defray out of separate funds, it will be necessary that every payment relating to the Establishment intended to be defrayed out of the Colonial Revenue should be made in detail by the Colonial Treasurer, and that every payment to be made in respect of the Establishment, intended to be defrayed out of funds to be provided by this Country, should be made in detail by the Officer of the Commissariat; by which arrangement the Revenue collected in the Colony and the funds provided by this Country will be accounted for separately by and through the proper Officers of the Establishment.

1828.
30 Jan.

Instructions re
payments by
colonial
treasury and
commissariat.

This mode would, in the opinion of His Majesty's Government, be more satisfactory than if the Officer of the Commissariat were directed to pay over in Gross to the Colonial Treasurer out of the funds voted by Parliament the Sums to be expended for Salaries to the Officers, engaged in the care and controul of the Convicts. I have, therefore, to desire (unless there should be any particular objection to such an arrangement, of which I confess I do not at present see the probability) that you will cause a quarterly Warrant, addressed to the Commissary, to be prepared in conformity with the Establishments already sanctioned by the Secretary of State, specifying in such Warrant the names of the persons and the amount of the Salaries, which will be thus paid out of the funds provided by this Country, which warrant will be deemed a sufficient authority, and, with the receipt of the parties, a proper discharge to the Commissary for the amount which may be so paid.

Quarterly
warrant to
commissary
for payment

I have, &c.,

W. HUSKISSON.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 12, per ship Elisabeth; acknowledged by Sir George Murray, 30th August, 1828.)

My Lord,

Sydney, 30th January, 1828.

I do myself the honor to transmit herewith, in reference to my Despatches numbered 122 and 123, dated the 14th of last Month, Copies of two Letters, which have passed between Mr. Mackaness and myself, his calling for more specific information respecting his removal, and mine declining to furnish it on the Grounds stated in my Letter.

Correspondence
with
J. Mackaness.

1828.
30 Jan.

Assault
committed by
J. Mackaness at
Liverpool on
W. Foster.

I should willingly have abstained from troubling your Lordship further on this subject, being satisfied that no additional proof can be required of the necessity of Mr. Mackaness's discontinuance in Office; but I am desirous your Lordship should be prepared to meet any representation he may make, and I must, therefore, beg leave to add the Copy of a Report from Mr. Carter and Mr. Foster, respecting a very disgraceful proceeding on the part of Mr. Mackaness, which took place at the Town of Liverpool during the late Quarter Sessions, which closed Mr. Mackaness's public Character as Sheriff.

The Case is briefly as follows. It appears that Mr. Mackaness dined in Company with the Magistrates on that occasion, and, having indulged too freely, became intemperate. The Company broke up in consequence, and Mr. Mackaness then joined the Grand Jury, who were dining in the same House. Having drunk to excess with this party, he appears, after leaving them, to have fallen in with Mr. Carter, the Chairman of the Quarter Sessions, and Mr. Foster, the acting Solicitor General, whom without any provocation he abused in the grossest manner, and at length collared Mr. Foster. The Case was brought before the Police, but, being still Sheriff, Mr. Mackaness managed to put an end to the proceedings, and Mr. Foster now means to seek redress in the Supreme Court.*

It is perhaps an unsatisfactory reason that the Government has been so long burthened with this Man for subjecting your Lordship to the perusal of these Details. They, however, prove that Mr. Mackaness is a person of very low character and disreputable habits, and will not be altogether unimportant if they prevent his being again employed by His Majesty's Government.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

MR. J. MACKANESS TO GOVERNOR DARLING.

Sir,

Apsley Lodge, 18th December, 1827.

Reason for
writing letter
of apology.

The Letter,† I had the honor to address to your Excellency on the 13th Instant, was written at the instance of Sir John Jamieson, who assured me, from a conversation he had with Mr. McLeay (after Your Excellency had received the Resolutions of the Turf Club), that such a Letter would be attended with desirable circumstances. I hoped nothing, but I complied with the wishes of a Gentleman, with whom I have been in habits of intimacy for three Years. It becomes necessary for me now to request your Excellency will inform me of the means, by which

* Note 177. † Note 178.

my Lord Goderich obtained the representations of my Conduct, therein alluded to, and which caused His Lordship to authorize you to dismiss me from Office, contrary, as I humbly conceive, to my Lord Bathurst's Instructions, and certainly inconsistent with the conditions on which I accepted the Office of Sheriff of New South Wales. I beg leave further to request that Your Excellency will have the goodness to send me a Copy (verbatim) of that part of His Lordship's Dispatch, which alludes to my Conduct, and gives you the power of refusing to reappoint me Sheriff.

1828.
30 Jan.

Demand for
papers and
explanations
from governor.

I have further to request Your Excellency will send me a Copy of the facts on Evidence, on which you draw three conclusions, so detrimental to me:

Vizt. First. "That I associate and have had intercourse with certain factious Individuals, who, in the most open and wanton manner, have endeavoured to degrade the Government in the Eyes of the Public, and to create discord between it and the People."

Secondly. "That I have evinced a disposition to consider myself independent of the local Authorities."

Thirdly. "That I have not rendered that prompt and willing obedience to the Orders of the Government, which is indispensable on the part of its Officers."

I have, &c.,

J. MACKANESS.

[Enclosure No. 2.]

GOVERNOR DARLING TO MR. J. MACKANESS.

Sir, Government House, 20th December, 1827.

I have received your Letter of the 18th instant, and have only to observe in reply that I am not aware you can require any more specific information with respect to the Secretary of State's Orders on the subject of your discontinuance in Office, than that communicated in my Letter* to you of the 29th November, to which it only remains for me to refer you.

Reference to
former letter.

As to the other points adverted to in my Letter, it can not now be necessary, as I have already intimated to you, to enter into any explanation, having, in the Exercise of the discretion which the Secretary of State was pleased to confide to me, merely added such other grounds, as, coupled with those specified in Lord Viscount Goderich's Despatch, rendered your discontinuance in Office indispensable. In stating these additional grounds, I trusted, as I still do, that a knowledge of the circumstances, which have prevented your re-appointment, will have a salutary

Explanations
refused.

* Note 178.

1828.
30 Jan.

effect in restraining others who, without such example, might have suffered themselves to be misguided, and have fallen into those errors of which you have become the Victim.

Continued
misconduct of
J. Mackaness,

It might, Sir, be unnecessary to repeat here, what is stated in my Letter of the 13th inst., that your conduct, subsequently to the receipt of my Letter of the 29th November, having had ample time to reflect on the objections taken to your former proceedings, were of such a nature as would of themselves have rendered your re-appointment impossible. This is a further proof why any explanation of previous facts is unnecessary; and I confess I am at a loss to comprehend, your subsequent proceedings being fresh in your mind, what you can propose by calling for explanations, which, even if favorable, would be unavailing.

I must beg, Sir, here to close our correspondence, having already reported fully to His Majesty's Government the proceedings, which have been adopted in your Case, and as a compliance with your request would be attended with no beneficial effect and would be highly inexpedient. I have, &c.,

RA. DARLING.

[Enclosure No. 3.]

MESSRS. CARTER AND FOSTER TO COLONIAL SECRETARY MACLEAY.

Sir,

Sydney, 25 January, 1828.

Account of
assault
committed by
J. Mackaness
on W. Foster
at Liverpool.

We had the honor to receive your Letter of the 8th Instant, requesting we would state for the information of His Excellency the Governor the circumstances attending the Assault committed upon Mr. Foster, the Solicitor General, by Mr. Mackaness, the late Sheriff, and for which the latter Gentleman on the 5th instant was summoned before the Sydney Police. The Assault took place under the following circumstances.

The Quarter Sessions were held at Liverpool on Tuesday the 1st Instant. The Magistrates as usual dined together the first day of Sessions.

The Sheriff was in the Chair. After Dinner, several Toasts were given by the Chairman, Mr. Mackaness; he then called upon Mr. Coghill, a Magistrate who was acting as Vice, to give a Toast; that Gentleman gave the health of the Governor. This appeared to give great offence. Mr. Mackaness almost immediately commenced abusing Mr. Coghill, and ended his observations by making some very disrespectful observations upon the Governor, which induced Mr. Foster to remark that, after what had been said, he felt it his Duty to state that he had never observed any thing in the conduct of His Excellency that was not becoming a perfect Gentleman. Mr. Mackaness then abused Mr. Foster very grossly. Mr. Carter almost immediately got up and

left the room, and he was followed by the other Magistrates. Mr. Carter and Mr. Foster then took a walk, and in about an hour and a half returned to the Inn to take their Tea; and, for the purpose of avoiding coming into contact with Mr. Mackaness, they took it in the Viranda. While Mr. Carter and Mr. Foster were so engaged, Mr. Mackaness came upon the Viranda with one of the Grand Jury Men, with whom he had been drinking since the Magistrates' party broke up; and, without the slightest provocation or a single word having been spoken to him, he uttered against Mr. Foster the grossest personal abuse, and charged him with being his Enemy and with having endeavoured to get him removed from his Office. Upon Mr. Foster denying the truth of the Charges made against him, Mr. Mackaness seized him by the Throat and tore his Shirt.

These are the circumstances, which induced Mr. Foster to bring Mr. Mackaness before the Police, and for which an information against Mr. Mackaness has since been filed in the Supreme Court.*

We have, &c.,

WM. CARTER. WM. FOSTER.

1828.
30 Jan.

Account of
assault
committed by
J. Mackaness
on W. Foster
at Liverpool.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Elisabeth.)

Sir, Government House, 31st January, 1828.

31 Jan.

I have the honor to acknowledge having received from the Right Honble. Lord Viscount Goderich the several Despatches Specified in the Margin,† and which arrived in the Ships "Florentia" and "Woodlark" on the 3rd and 28th January inst. respectively.

Despatches
acknowledged.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Elisabeth.)

Sir, Government House, 31st January, 1828.

I have the honor to acknowledge your several letters as specified in the Margin,‡ and to which I shall do myself the honor to reply as early as circumstances will permit.

Despatches
acknowledged.

I have, &c.,

RA. DARLING.

* Note 177.

† *Marginal note.*—Florentia, Nos. 41, 43, 44, 45, 46, 47; Woodlark, Circular, Nos. 3 and 4, and Nos. 34, 35, 36, 37, 38, 39, 40, 42, 21.

‡ *Marginal note.*—Private by Major Cavenagh, 28 July, 1827; by Mr. Bettington, 30 July; by Mr. Philips, 28 July. By ship Florentia, Private, 10th June; 20th July; Private, 7 August; 9th, 10th, 16th, 16th August. By Woodlark, 20th, 27th, 31st July.

1828.
1 Feb.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 13, per ship Elisabeth.)

My Lord, Government House, 1st February, 1828.

Claims for
compensation
by Revds. W.
Cowper and
R. Hill.

Your Lordship will perceive, by the accompanying Documents, that the Archdeacon has brought under my Consideration certain Claims for Compensation, preferred by the Reverend William Cowper and the Reverend Richard Hill, the two Officiating Chaplains in Sydney.

Before deciding on these Claims, I deemed it advisable to refer them to a Board, composed of the Lieut. Governor, the Acting Auditor, and the Collector of Internal Revenue, with a view to their full and complete investigation.

One of the Members having on some points differed in opinion from the others, two reports have been submitted, which I do myself the honor to enclose for your Lordship's information. I have not thought it necessary to trouble your Lordship with the whole of the Documents, to which the Reports refer, as those transmitted are the most important and contain all the necessary particulars of the respective Cases.

The Reverend Mr. Cowper claims the Sum of £1,058 1s., part of it in reimbursement of the Outlay on the land originally allotted him for a Glebe, which he subsequently relinquished, but the greater portion as Compensation for Rations and Fuel, to which he considers himself entitled in terms of the assurance made to him by the Reverend Mr. Marsden under the sanction of the late Lord Castlereagh and the Archbishop of Canterbury, at the time of his Original engagement in England, but which it appears were withdrawn several years ago in consequence of Instructions to Governor Macquarie, directing the discontinuance of such allowances generally to the Civil Officers.

The Reverend Mr. Hill claims compensation for the losses, which he states he sustained in consequence of his not having been put in possession of the Glebe, promised him before he left England, till three Years after his arrival, and for the loss of Cattle and unproductive Outlay, which he attributes to the Unwholesome Pasturage and bad Soil of the Glebe land, which was ultimately assigned him. His loss in Cattle alone, he estimates at 92 Head.

Compensation
recommended
by board of
inquiry.

Your Lordship will perceive that the Majority of the Board are of opinion that the Reverend Mr. Cowper possesses fair and equitable claims for Compensation, on the grounds above stated, to Amount of £725 8s. 6d., and the Reverend Mr. Hill to that of £304 12s.

The dissentient Member of the Board considers the Claims of Mr. Cowper to Amount at least to £1,032 17s. 5d., and in the case of Mr. Hill proposes that he should be allowed the Number of Cattle recommended by the Archdeacon, if not as a matter of positive right, at least as a Boon to which the hardship of his case he thinks gives him a fair claim.

1828.
1 Feb.

Compensation
recommended
by board of
inquiry.

From the remoteness of the period, in which a portion of the Claims in question originated, and the indeterminate nature of the data, on which they are founded, it is difficult if not impossible to come to a Satisfactory conclusion as to the exact amount, at which they ought to be admitted. I am, however, satisfied that the Sums, recommended by the Majority of the Board, Vizt.

To the Revd. Mr. Cowper	£725	8	6
.. .. Revd. Richard Hill	£304	12	0

fall short, rather than exceed what these Gentlemen are entitled to receive; and I have in consequence ventured to authorize the issue of those Sums respectively, as a means of extricating them from the embarrassments, in which they are at present involved, and which their small and inadequate Income has rendered unavoidable, feeling at the same time, from the respectability of their character and the exemplary manner in which they discharge their laborious duties, that they have the strongest claims to the indulgent consideration of Government.

Payments
authorised.

I have not thought it advisable to adopt the suggestions of the Archdeacon, with respect to giving these Gentlemen an equivalent in Cattle, the proposed arrangement appearing complicated and objectionable in many points of view, and as I believe the proposition arose from his considering that such mode of payment would be the most convenient to the Government.

Compensation
in cattle
proposed by
archdeacon.

I must not omit drawing your Lordship's attention to the circumstance of the Majority of the Board, as appears by Enclosure No. 4, having deducted from the indemnification to Mr. Cowper the Sum of £40 a year from the commencement of the year 1825, granted to him as an increase of Salary, from an impression that such increase may have been intended as a Compensation for the loss of Rations, which His Majesty's Government had ordered to be discontinued, as already stated.

Deduction in
claim of Revd.
W. Cowper.

Your Lordship will perceive that the Reverend Mr. Cowper's claim to Fuel and Rations being thus admitted, it will be necessary to continue those Allowances to him, until some other arrangement shall be made, the increase of £40 a year, if intended to be in lieu of these Allowances, not being equivalent to their value.

1828.
1 Feb.

The Archdeacon having brought under my consideration the inadequacy of the Stipends of the Clergy generally, I hope to be enabled to address your Lordship on this Subject specially by the present opportunity.

I have, &c.,
RA. DARLING.

[Enclosure No. 1.]

ARCHDEACON SCOTT TO COLONIAL SECRETARY MACLEAY.

Sir,

Sydney, 6th June, 1827.

Submission by
archdeacon of
claims of Revds.
W. Cowper and
R. Hill.

I have to request you will lay before the Governor the accompanying Papers for His Excellency's consideration and revision.

They consist of two Statements from the Revd. William Cowper and the Revd. Richard Hill, the Chaplains at Sydney.

The substance of Mr. Cowper's Statement is that, on being appointed to a Chaplaincy in this Colony, the Emoluments held out to him were a Salary of £260 per annum, a House and Glebe, with Fuel and Rations for himself and Family, allowances which, on a very moderate calculation, were estimated at £87 15s. per Annum, exclusive of the value of the Glebe. These allowances were, in consequence of a Despatch from the Secretary of State, dated 3rd February, 1814, discontinued; but, upon a representation to the then Governor of the hardship of the case, inasmuch as these inducements were held out to the Chaplains at a time when there was the greatest difficulty in procuring any Person of respectability to come to these Colonies, His Excellency continued the allowance for a stated period, and then discontinued them entirely, but without making any compensation, to which, under the agreement with the Government in England, they were unquestionably entitled.

With regard to the Glebe, it chiefly consists of a Sand Rock, and even in the present advanced state of the Colony is not valued at more than £40 per annum to graze on. It is also to be considered that, although the Glebes of the Clergy were ordered by the Secretary of State to be cleared and Fenced at the Expense of Government by Convict Labour, that belonging to Mr. Cowper has only been fenced; and it is also to be remarked that many years ago Mr. Cowper paid £160 for fencing it and erecting a small weather boarded Cottage, but which shortly after disappeared through repeated depredations.

The Substance of Mr. Hill's case is that, in addition to his Salary of £250, he was promised the usual Glebe of Four Hundred Acres, but which he did not receive, although repeatedly promised, until four years after his arrival in the Colony; in

consequence of which delay, the Cows he purchased, not having the Glebe to depasture them on, were placed out to keep at a considerable Expense to him and ultimate loss; and that, when he was put in possession of the Glebe, its distance from Sydney (being 9 miles) rendered it almost impossible for him to give any personal attention, consistent with his other Duties; the bad state of the Soil, the quantity of Timber and of a quality which much injures the ground wherever it is found to grow, the frequent depredations by Bushrangers, for whom it was once a constant Harbour, obliged him to remove the few Cattle which survived; nor until last year has he been able to let it at any profit to himself, and even now he does not receive above £50 per Annum. Had Mr. Hill been put in possession at the period he was promised, according to the usual rate of Increase of Cattle in the Colony, he ought to possess at this time 118 Head of various ages, as the enclosed Statement shews, which Statement I have had verified by several of the largest and most respectable Proprietors in the Colony.

Under these circumstances, I feel persuaded His Excellency will see the justice of making some remuneration for such heavy losses, which I know have involved these two most worthy and indefatigable Chaplains in very serious pecuniary difficulties, and such, as I am sure His Excellency would feel every disposition to relieve, since they do not proceed from any imprudence of their own.

The mode, that I would take the liberty of submitting to His Excellency for this remuneration, is that the claim of the Revd. Mr. Cowper, amounting to £1,058 1s., be liquidated by a Sale of Government Cattle, and that a sufficient number of good breeding Cows which, according to the usual calculation, would be about *one eighth* of those, which realized that amount, calculated at the average of the Sale, be placed in Mr. Cowper's hands *on loan*, to enable him to return at the end of ten years the full number, Sold for the sum above mentioned, and that Mr. Cowper be required to give his Bond for returning the same.

That the claim of Mr. Hill be liquidated by paying to him from the proceeds of the sale of Government Cattle £241, and that he receive 118 Head of Cattle of the ages and qualities set down in the Paper, which accompanies his Statement; and that he be required to give his Bond to return in ten years the same number of Cattle, and as many more as must be sold to raise the above Sum of £241.

In submitting this to His Excellency, I have had in view that, though the justice of their Claims requires remuneration, yet, in

1828.
1 Feb.

Submission by
archdeacon of
claims of Revds.
W. Cowper and
R. Hill.

1828.

1 Feb. ,

Submission by
archdeacon of
claims of Revds.
W. Cowper and
R. Hill.

the present state of the Finances, it may be the most convenient way of doing so without any loss to the Government, inasmuch as the cattle will ultimately be in the possession of the Crown to dispose of.

In conclusion, I beg to add, for the information of His Excellency, that, in a Memorial of the Revd. Robert Cartwright to the Commissioner of Enquiry having been referred to me by Lord Bathurst's directions, upon my Report His Lordship was pleased to order remuneration to be paid in Money to the amount of £900, and 1,280 acres of Land, his Claims being founded on the same principles as those of the Revd. Gentlemen now submitted.

I have, &c.,

T. H. SCOTT.

[Enclosure No. 2.]

STATEMENT BY THE REVEREND W. COWPER.

Sydney, 24th May, 1827.

Statement of
claim by Revd.
W. Cowper.

THE Revd. William Cowper states that, before he left England in 1808, he was informed and assured by the Revd. Samuel Marsden that, as a Chaplain in New South Wales, besides his Salary of £260 per annum, he would be allowed a House and a Glebe, also the accustomed Rations and other advantages for himself, his Family and Servants; and he further states that, for some years after his arrival, he was allowed Rations and Fuel. Mr. Cowper states likewise that his Family and the Government Servant were put off the Stores the 30th September, 1814; but Mrs. Cowper and four Children were subsequently put on again for twice eighteen months; that his own personal Ration he believes was allowed until the end of the year 1818; but that the Fuel to the best of his recollection was not supplied beyond 31st December, 1812.

See Government and General Orders, 3rd September, 1814, also letters from Secretary's Office, dated 15th February, 1815, and 31st May, 1817.

In the subjoined calculations, Mr. Cowper has reckoned the Rations at an average of 7s. per Week, the Slop Clothing for the Man 65s. per annum or 1s. 3d. per week, and the Fuel at 8s. per week.

The average Rate of the Ration, through all the unvictualled periods, is much under the Price, which it actually Cost, as Purchased by Mr. Cowper in the Market.

No Interest is charged for any part of the Amount, although Mr. Cowper has been obliged to Pay Interest for Money, which

he was compelled to borrow in consequence of the Government Rations and Fuel having been withdrawn from him.

Mr. Cowper's encrease of Salary, Vizt. £40 per annum, commenced 1st January, 1825.

The following Sums are now respectfully submitted as expressing the estimated valuation of the Rations and Fuel withdrawn.

Vizt. Until 31st Dec'r, 1818.

	£	s.	d.	£	s.	d.
Fuel from 31st December, 1812, to 31st December, 1818, 6 years = 313 weeks at 8s. per week	£125	4	0			
Government Man from 30th September, 1814, to 31st December, 1818, 4½ years = 221 weeks at 8s. 3d. (Rations 7s., Slops 1s. 3d.) per week	91	3	3			
Mrs. Cowper and 4 Children from 30th Septr., 1814, to 31st December, 1818, deducting twice eighteen months, i.e. 4½ years less 3 years = 1½ years = 65 weeks at 10s. 6d. (1 Ration 7s., ½ do. 3s. 6d.)	34	2	6	250	9	9

From 31st December, 1818, to 31st December, 1824.

Rations and Fuel for Mr. Cowper, his Family and Government Man, from 31st December, 1818, to 31st December, 1824, i.e. 6 years = 312 weeks at £1 13s. 9d. per week (Self, Mrs. C. and 4 children, 2½ Rations at 7s. = 17s. 6d.; Govt. Man, 8s. 3d.; Fuel, 8s.—Total, £1 13s. 9d.)	528	3	9
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Difference between the encrease of Salary and average of the Rations and Fuel, i.e. £87 15s. (From 31st Dec'r., 1824, to 30 June, 1827, £1 13s. 9d. per week) less £40 = £47 15s. per annum, and from 31st December, 1824, to 30th June, 1827 = 2½ years	£119	7	6
Estimated value of Fuel and Rations, withdrawn and no Compensation	898	1	0

Mr. Cowper also, with a hope of deriving some advantage from the Glebe in 1810, paid about £80 for erecting a boundary Fence, and about £80 more for a small House, a Stock Yard and Garden Fence, etc.; these Expenses, he did then understand, would be repaid by Govt., whenever he should leave the Glebe	160	0	0
	£1,058	1	0

N.B.—Government have never cleared any part of the Glebe for Mr. Cowper.

Sydney, 24 May, 1827.

WILLIAM COWPER.

[Enclosure No. 3.]

REVEREND RICHARD HILL TO ARCHDEACON SCOTT.

Rev'd. Sir,

Sydney, 10th July, 1826.

In submitting to your consideration the disappointment and actual losses, I have sustained in my endeavours to improve my Income by taking possession of the Glebe, from which I was led to expect considerable emolument, I have endeavoured, in the accompanying Memorandum, to make such a Statement of my losses, as will at once shew their extent and the difficulty in which I have been involved by a possession which should have benefitted me.

The Glebe Land is of a very inferior quality, and so thickly Timbered and badly watered, as to prove very unwholesome for

1828.
1 Feb.

Statement of
claim by Rev'd.
W. Cowper.

Statement of
claim by Rev'd.
R. Hill.

1828.
1 Feb.

Statement of
claim by Revd.
R. Hill.

Cattle. Of this, I was not aware, until I had experienced most serious loss, and my Cattle were injured in Constitution. At this moment, I am obliged to remove 2 or 3 Horses to another Pasture, although they are nearly the only Stock on the Glebe!

By a comparative calculation of increase, I should now, from the Purchases I have made, be in possession of 150 Head of Cattle. I sent all I had, but 2 or 3 Cows, off the Glebe in October, 1824, to pasture at the Coal River, for which I pay 8s. per Head per annum; and, up to this day, I can only count 62 Head, shewing a positive loss of about 90 Head, the calculation being derived by comparison with the increase of other Herds.

Finding the Glebe lands so unproductive as a Cattle Run, I have attempted to farm a small portion, which I found already cleared to my hand; but in this also I have failed, and, after exhausting all my means and keeping three Men constantly on it, I find myself only deeper involved and without the least prospect of any return for all my outlay.

As my difficulties encreased, I endeavoured to meet some of the Expenses by letting a part of it; but in this also I met with disappointment by the failure of my Tenants, so that I was obliged to take my Rent in a way, neither profitable to the Estate nor agreeable to my feelings.

The distance of the Glebe from the Town of Sydney (9 miles), in which I necessarily reside, has augmented my difficulties, both as to receiving from it Fuel, Vegetables, etc., and for Superintendence, as I cannot spare the time to travel so far frequently; and consequently I have been exposed and subjected to the pecculations of my Servants.

The Situation of the Huts is such as to afford Harbour for Bushrangers, and the losses I have sustained by those Marauders is very considerable. Besides my Cattle, all my Pigs were stolen at one time; and I never recovered any of them. At another time, my Men were stript of their clothing, etc., by a desperate Gang of Runaways.

By this Statement of facts, I feel assured you will be satisfied that the possession of this Glebe is far from being that profitable appendage to my Church, which it was expected to be, and no doubt from the Instructions of the Secretary of State was intended to be. And, as I find myself so much involved by the attempts I have made to render it productive, I trust that I may be allowed to Claim your consideration of this case; that you will relieve me from this burthensome and ruinous possession, and allow me something equivalent to the advantages, which I naturally expected to derive from the possession of a good

Glebe. And I trust that I shall not be considered as asking too much, when I request some relief from the embarrassments, which have been thus brought upon my limited means.

1828.
1 Feb.

I am, &c.,

RICHARD HILL, Assistant Chaplain.

[Enclosure No. 4.]

MESSRS. STEWART AND RYRIE TO COLONIAL SECRETARY MACLEAY.

Report by
W. Stewart and
S. Ryrie on
claims of Revds.
W. Cowper and
R. Hill.

Land Board Office, George Street, Sydney,

Sir,

22nd September, 1827.

In compliance with the directions, contained in your Letter of the 23rd Ultimo, to report on certain Claims, preferred by the Revd. Mr. Cowper and the Revd. Mr. Hill therewith transmitted, we have the honor to report, for the information of His Excellency the Governor, that, after an attentive perusal of the Statements and Documents submitted to us, and in the absence of any written authority, we do not think the Claim of Mr. Cowper can be admitted for the full number of Rations put down by him in his Memorandum herewith returned.

The Venerable the Archdeacon having stated in his letter to you that the Revd. Mr. Cartwright had received remuneration in Money to the amount of £900 and 1,280 Acres of Land on the same principles, as those of the Reverend Gentlemen now submitted, we deemed it proper to address a Letter to Mr. Cartwright, requesting to know the specific grounds on which he founded his Claim for the remuneration, to which the Archdeacon alluded; and, by his reply (transmitting at same time a Copy of his Memorial* to Earl Bathurst), it will be seen that the remuneration granted him was for House Rent, Horse Hire and arrears of Salary, and consequently bears no analogy to the Claims of Mr. Cowper and Mr. Hill.

Mr. Cartwright further states that the Grant of Land, to which the Venerable the Archdeacon alludes, was given to one of his Sons as a free Settler in the Colony, and totally unconnected with any remuneration he received or may receive.

Mr. Cowper's Claim being founded on the assurance given him by the Revd. Mr. Marsden before leaving England, we requested that Gentleman to favor us with all the information in his power; and, by the accompanying Statement, it appears that Mr. Cowper and Mr. Cartwright came to this Colony on the faith of receiving Rations of Provisions, and Fuel for themselves and Families, together with One Convict Servant, Clothed and fed, in addition to their stipulated Salaries. But it is evident from the Despatch of the Secretary of State, dated 3rd February,

* Note 179.

1823.

1 Feb.

Report by
W. Stewart and
S. Ryrie on
claims of Revds.
W. Cowper and
R. Hill.

1814, that no communication had been made to Governor Macquarie on the subject of granting Rations to Civil Officers, as he is directed to give immediate orders for putting a stop to the practice; and a Government and General Order was accordingly issued to take effect from the 30th September, 1814; but, on the remonstrance of Mr. Marsden, Governor Macquarie was pleased to continue Rations to the Chaplains and their Families for a period of twice eighteen Months longer; in granting this indulgence, however, no notice is taken of Government Servants, and we do not, therefore, consider that Mr. Cowper's Claim for a Government Servant after the 30th September, 1814, can be sustained, as, after that period, no Rations were allowed for the Servants of Civil Officers with the exception of Magistrates, who then received no Salary, but Rations for four Government Men were continued to them as compensation for their Services as Justices of the Peace.

In Mr. Cowper's Statement, he Claims Rations for himself, Mrs. Cowper, four Children and a Government Man, down to the 30th June last; but, as it appears by his own Letter that two of his Sons were in Government employ in 1821 and 1823, and a third had Settled on his Grant of Land in 1822, we do not think a Claim for Rations for them can be sustained after those respective periods.

Mr. Cowper's family having received Rations to 1st October, 1817, his own personal Ration to 31st December, 1818, an Increase of Salary of £40 per annum from and after the 31st December, 1824; his son Charles having entered the Commissariat Department about the 30th November, 1821; Thomas took possession of his Grant of Land about the 30th November, 1822; and Henry was an Hospital Assistant about the 31st August, 1823; the Claim for Rations will be as follows:—that is to say, from 1st October, 1817, to 31st December, 1824, and from 1st January, 1825, to 30th June, 1827, deducting the £40 per annum increase of Salary from the Value of the Rations for the latter Period, Vizt.

	£	s.	d.
1st. Octr., 1814, to 30th Septr., 1817, Fuel for 156 weeks at 8s. . .	62	8	0
1st Octr., 1817, to 31st Decr., 1818, Mrs. Cowper and 4 Children: 1½ Ration at 7s. = 10s. 6d. Fuel, 8s.:—65 weeks at 18s. 6d.	60	2	6
1st Janry., 1819, to 30th Novr., 1821, Mr. and Mrs. Cowper and 4 Children: 2½ Rations at 7s. = 17s. 6d. Fuel, 8s.:—151½ weeks at £1 5s. 6d.	193	3	3
1st Decr., 1821, to 31 Decr., 1822, Mr. and Mrs. Cowper and 4 Children: 2½ Rations at 7s. = 15s. 9d. Fuel, 8s.:—56½ weeks at £1 3s. 9d.	67	1	10½
1st Janry., 1823, to 31st Augt., 1823, Mr. and Mrs. Cowper and 2 Children: 2 Rations at 7s. = 14s. Fuel, 8s.:—34½ weeks at £1 2s. 0d.	37	19	0
1st Septr., 1823, to 31 Decr., 1824, Mr. and Mrs. Cowper and 1 Child: 1½ Ration at 7s. = 12s. 3d. Fuel, 8s.:—69½ weeks at £1 0s. 3d.	70	7	4½

	£	s.	d.	£	s.	d.	1828. 1 Feb.
Mr. and Mrs. Cowper and 1 Child: 1½ Ration at 7s. =							
12s. 3d. Fuel, 8s.:—130 Weeks at £1 6s. 3d.	131	12	6				
Deduct encrease of Salary for the above period at £40							
per annum	100	0	0				
				31	12	6	Report by W. Stewart and S. Ryrie on claims of Revds. W. Cowper and R. Hill.
Rations for Mr. Cowper's youngest Son from 1st October, 1817, the period when Governor Macquarie's renewal of the Rations ceased, to 5th February, 1827, the period of young Mr. Cowper's Embarkation for England: 488 Weeks at 1s. 9d. per week				42	14	0	
				£565	8	6	

Mr. Cowper states that, with a view to make his Glebe more beneficial to him, he expended £160 in Fencing and Buildings, which he understood would be repaid by Government, when he should leave it; and, as it does not appear that any part of it was cleared by Government, we are of opinion that this outlay should be sustained, which will make the total of his Claim amount to £725 8s. 6d. Vizt.

For Rations, £565 8s. 6d. Outlay on Glebe, £160:—£725 8s. 6d.

In submitting our Opinion on the Claim of the Revd. Mr. Hill, which is quite dissimilar from that of the Revd. Mr. Cowper, we beg to state distinctly that we do not feel ourselves competent to enter into calculations of deficiency in an assumed or imaginary increase of Stock or any casualties relating thereto. But, during the period Mr. Hill was kept out of possession of his Glebe, after his arrival in the Colony, we consider him entitled to remuneration.

In Mr. Hill's Memorandum, he Claims allowance for Fencing, etc.; and, on Enquiry as to what extent of his Glebe land had been cleared and Fenced by Government, we find that, in December, 1822, the Glebe was measured; that a part of it was then cleared and Fenced, and some Buildings erected by Government; that an Estimate was made of the Expense of Clearing 100 acres and completing the Fences, amounting to £383 14s. 0d., from which was deducted the value of the Buildings, the Expense that had been incurred for Clearing and Fencing, as also some Manure, and the Balance £23 3s. 4d. was paid Mr. Hill on the 23rd September, 1823 (see Copy of Report by Mr. Oxley and Major Owens with Statements thereon).

It appears that Mr. Hill arrived in this Colony in June, 1819, but did not get possession of his Glebe until the end of March, 1822, a period of nearly three Years; for which we recommend an allowance of £50 per annum, that Rent having been lately obtained for it; and, as the first 464 Rods of Fence erected by Government may be considered of less Value than if it had been erected at the time Mr. Hill got possession, and for which he was charged 3s. 6d. per Rod, we are of opinion that Half of this Charge or 1s. 9d. per Rod should be deducted, making a difference of £40 12s. in favor of Mr. Hill.

1828.

1 Feb.

Report by
W. Stewart and
S. Ryrie on
claims of Revds.
W. Cowper and
R. Hill.

Having recently given up his Glebe to the Church Corporation, in consideration of a certain Yearly allowance, we consider that he has a just Claim on the Corporation for the Sum charged him for the Buildings, erected by Government, amounting to £114. The amount of Mr. Hill's Claims on the Government and Church Corporation will then be as follows:—Vizt.

3 years' Rent of Glebe at £50	£150	0	0
Difference in the price charged for the old fence, erected previous to			
Mr. Hill getting Possession	40	12	0
Claim on the Church Corporation for Buildings	114	0	0
	<hr/>		
	£304	12	0

WILLIAM STEWART. S. RYRIE.

[Sub-enclosure.]

[*This was a copy of Earl Bathurst's despatch to Governor Macquarie, dated 3rd February, 1814; see page 124, volume VIII.*]

[Enclosure No. 5.]

MR. JAMES BUSBY TO COLONIAL SECRETARY MACLEAY.

Sir,

Sydney, 22nd September, 1827.

Not having been able so far to coincide in the Opinions of the Majority of the Board, appointed to consider the Claims of the Reverend Messrs. Cowper and Hill, as to justify me to myself in Signing their Report, I have thought that I would compromise the duty, which His Excellency the Governor has been pleased to confide to me, as a Member of that Board, were I not to state separately the grounds of my dissent and the conclusions, to which my views of the case have led me, after the maturest consideration I have been able to give the subject.

In Mr. Cowper's case, it appears to me to be fully ascertained and established that the Reverend Mr. Marsden, negotiating as the accredited Agent of the Government with Mr. Cowper, informed and assured him that, besides his Salary of £260 per annum, he would be allowed a House and Glebe, also the accustomed Rations and other advantages for himself, his Family and Servants; and it further appears that, for some years after his arrival in the Colony, Mr. Cowper enjoyed these advantages.

As they cannot therefore in this case be considered in the light of an Indulgence or "favor," but as an express condition of Mr. Cowper's engagement, I am of Opinion that the Despatch of the Secretary of State could not apply to him, but merely to those Civil Officers, who received such advantages in the Colony as an Indulgence or favor, without having a Claim for them by a previous Engagement.

Report by
James Busby
on claims of
Revds. W.
Cowper and
R. Hill.

For this reason, I am of opinion that Mr. Cowper is entitled to have a full and fair equivalent, not only for the Rations and other advantages withdrawn from himself and his Family, but from his Government Servant or Servants, who were integral parts of his Family; and I cannot, therefore, agree with the other Members of the Board in disallowing the Sum, estimated as the Value of the Rations and Slops for the Government Servant in Mr. Cowper's Statement.

1828.
1 Feb.

Report by
James Busby
on claims of
Revds. W.
Cowper and
R. Hill.

On the question of allowing Rations to Mr. Cowper's fifth Child, who was born in the Colony, I would feel more difficulty, as, however reasonable it is to suppose that the Rations for his Family should include any addition, which should be made to that Family by birth, still it is a question open to dispute and subject in my opinion to be settled rather by the Rule, which Custom may have established in such cases, than by the authority of any more defined principle. From this difficulty, I am, however, relieved by the authority of the same order, which excluded Mr. Cowper's Child born in the Colony from receiving Rations, As it included one of Mr. Cartwright's Children in a similar Situation, and by the circumstances of most or all of Mr. Marsden's Children, for whom he drew Rations, and with reference to whom he must necessarily have negotiated with Mr. Cowper, having been born in the Colony.

On the principle, therefore, that Mr. Cowper is entitled to the fulfilment of the terms of his Agreement, I am of opinion that there are no grounds for allowing this Claim for one period and disallowing it for another, but that it should be considered valid from the date stated by Mr. Cowper, till the period of his Son's ceasing to be a Member of his Family by his Embarkation for England.

It accordingly appears to me that, besides the Sums stated in the Report of the Majority of the Board, Mr. Cowper is also entitled to the Sums of £274 7s. 5d. and £33 1s. 6d., in lieu of Rations and Slops to his Government Servant, from the 30th September, 1814, to the 30th June, 1827, and of Rations* to his fifth Child from the date of its birth, 3rd July, 1810, to the 30th September, 1817, making in all the sum of £1,032 17s. 5d.

I think it right to observe, however, that, if the custom of the Service, during the period included in the Estimate, did not limit the Children of a Family receiving Rations from the Commisariat Stores (without reference to their ages) to the proportion of one fourth of a full Ration, but allowed an increase in quantity in proportion to the Age of the Child, I think Mr. Cowper

* *Marginal note.*—378 Weeks, £33 1s. 6d.

1828.
1 Feb.

Report by
James Busby
on claims of
Revds. W.
Cowper and
R. Hill.

is entitled to the difference in Value between the fourths of a Ration and the proportions, which the customs of the Service would have allowed his Children to receive.

As it appears also that Mr. Cowper took every becoming opportunity to represent to the proper authorities the grievances, under which he considered himself to Labour, and as any default in this respect (on the supposition that it existed) might be fairly excused by his professional character and Office, I think that he is fairly entitled to the customary Interest of the Colony on the various Sums, as they accumulated up to the date of their being finally discharged.

Before concluding this Statement of my Opinions on the case of the Revd. Mr. Cowper, I beg leave to observe that I would have considered it desirable still further to elucidate the subject by Queries on two particuar points, not so much because the Evidence produced has been insufficient to enable me to come to a satisfactory conclusion, as because, in a Judicial Enquiry like the present, it is particularly desirable that the most direct Evidence, which is procurable on every point, should be obtained.

The points, which appear to me still capable of elucidation, are, First: Whether Mr. Marsden did not himself consider, and, directly or by implication, give Mr. Cowper to understand that the Rations, Fuel and other advantages were indulgences incidental to the infant state of the Colony, but liable to be discontinued at a more advanced stage, and were consequently no part of the permanent Income which he was to expect? and Secondly: Whether Mr. Cowper in any degree compromised his Claim by accepting Grants of Land or other Indulgences, in consideration of what might be considered the hardship of his case.

In the case of the Revd. Mr. Hill, I think the Sum of £50 per Annum a fair compensation for the want of a Glebe, during the period he was kept out of possession; but I do not agree with the Majority of the Board in opinion that he is entitled to be paid for any overcharge in the Valuation of the Old Fence, nor that he has any Claim upon the Church Corporation for the amount, at which the Houses on the Glebe were valued, as he had at most only a Life Interest in them. The greatest Amount, which it appears to me Mr. Hill could Claim on these grounds, would be the difference between the advantage these Improvements did afford him, and what the Improvements, he was entitled to have effected on the Glebe, would have afforded during the period of his occupancy; a Claim altogether indeterminate and not in my opinion of any great amount, were it possible to ascertain it.

It certainly does appear, however, that, by having the actual improvements upon the Glebe valued and their value substituted, as far as it went, in lieu of the Improvements, which by Governor Macquarie's order should have been effected, Mr. Hill has been a sufferer to a considerable extent, as it does not appear that he derived from the Houses or from the cross fencing any equivalent advantage, to what clearing 100 acres and enclosing the whole Glebe by a boundary Fence would have yielded.

1828.
1 Feb.
—
Report by
James Busby
on claims of
Revds. W.
Cowper and
R. Hill.

Besides this indeterminate Claim, there is another, to which, were he able to furnish documents or means for ascertaining its amount, I consider Mr. Hill fully entitled, Vizt. the value of the Fence, which he erected at his own Expense to complete the enclosure of the Glebe, and which to Judge from the Report of the Board, which valued the improvements, must have been considerable, although Mr. Hill is unable to estimate its amount.

It is, therefore, impossible to ascertain what determinate amount of Claim Mr. Hill has on these grounds; but he is certainly entitled to have it kept in view, in the consideration of the claim which he brings forward for the Losses, he sustained in Cattle, from the injurious nature of the Pasturage on his Glebe, and which it fully appears made it rather an injurious than an advantageous possession to him.

But, however strongly a faithful Servant of the Public may be entitled to the indulgent consideration of the Government in a case like the present, where from fortuitous causes the provision, made for an adequate remuneration of his Services, had failed of their object, I think there is a very broad line of distinction to be drawn between the nature of this Claim and that of the Revd. Mr. Cowper, or that of Mr. Hill himself, for the valued rental of his Glebe, while he was kept out of possession.

Supposing Government to have fulfilled what was incumbent upon them in enclosing the Glebe and clearing the prescribed portion of it, I do not think they could in strict justice be made answerable for the unforeseen and accidental circumstances, which interfered with the fulfilment of their intention. This is, however, merely my opinion on the abstract view of the question, for on the other hand a Servant of the Public is always entitled, both in sound policy and justice, to an adequate remuneration for the faithful performance of his Public duty; and, the provision made in the present instance having proved inadequate, not only not from the fault of the Individual, but in despite of great exertions to the contrary, I think it would require a very weighty countervailing advantage to the Public, in preventing the Establishment of an injurious precedent, to make a strict application of the abstract principal, either expedient or just.

1828.

1 Feb.

Report by
James Busby
on claims of
Revs. W.
Cowper and
R. Hill.

Mr. Hill has, however, undoubtedly a Claim upon the Generosity of the Government for that compensation as a *boon*, which perhaps he could not maintain upon their justice as a *right*; and this comes strengthened by the consideration that he has also a claim upon the justice of the Government, though its amount is indeterminate, and that they, in the first instance, did not, by implementing their part of the Contract, establish their right of exemption from the consequences attending its failure.

From these considerations, I am of opinion that, in addition to the Sum of £150 (one hundred and fifty Pounds), the Revd. Mr. Hill should receive from the Government Herds the number of Cattle of the ages and descriptions proposed by the Venerable the Archdeacon, to be repaid after ten years in kind, should His Excellency the Governor see fit; but I am of opinion that there are no grounds for making him provide also by this means for the repayment of the Sum, which he is considered entitled to for the rental of his Glebe.

I think it right also to add that there appears to me to be room for a distinction between the Losses sustained by the unhealthiness of the pasturage, a circumstance peculiar to Mr. Hill's Glebe, and those occasioned by Bushmen and other causes, which are incidental to the Colony in general; but I think that the indeterminate claim, which Mr. Hill has upon the *Justice* of the Government, is sufficient to counterbalance the difference, which this distinction would occasion.

I have, &c.,

JAMES BUSBY.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 11, per ship Mermaid.)

7 Feb.

Sir,

Downing Street, 7 Feb., 1828.

Appointment of
Revd. J. Docker.

I have the honor to acquaint you that, in consequence of the Archdeacon of New South Wales having notified that a vacancy had occurred in the Clerical Establishment of the Colony from the resignation of the Revd. G. A. Middleton, I have appointed the Revd. Joseph Docker to fill that vacancy.

I have, &c.,

W. HUSKISSON.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING

(Despatch No. 12, per ship Mermaid.)

8 Feb.

Sir,

Downing Street, 8 Feb., 1828.

Despatch
acknowledged.

I have the honor to acknowledge the receipt of your despatch of the 21st of May last, No. 69, reporting the Measures, which had been pursued by Capt. Stirling of H.M. Ship "Success" for fixing a Settlement on the Northern Coast of New

Holland; and, having referred for the consideration of His Royal Highness the Lord High Admiral the proposal, contained in that dispatch, that a small Ship of War should occasionally appear off that Station, I have the honor to transmit to you the Copy of a letter in reply, written by direction of His Royal Highness, by which you will perceive that instructions have been issued to the Admiral Commanding on the East India Station in conformity with your suggestion.

1828.
8 Feb.

Ship of war
to visit
N. Australia
periodically.

I have, &c.,

W. HUSKISSON.

[Enclosure.]

MR. JOHN BARROW TO UNDER SECRETARY HAY.

Sir, Admiralty Office, 31 January, 1828.

Having laid before His Royal Highness the Lord High Admiral your letter of yesterday's date, with its inclosure from General Darling, Governor of New South Wales, I am commanded to acquaint you that His Royal Highness has communicated to the Admiral, commanding on the East India Station, that part of General Darling's Despatch which recommends the occasional appearance of a Ship of War off that part of the Northern Coast of New Holland, in which the new Settlements have been formed.

I am, &c.,

JOHN BARROW.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 13, per ship Mermaid.)

Sir, Downing Street, 9 Feby., 1828.

9 Feb.

I regret to be under the necessity of acquainting you that it does not appear that this Department has been furnished by your Government with the Blue Book for the year 1826; and, as great inconvenience is experienced from the irregular transmission of these Returns, I must request that you will give immediate directions for the preparation of the Blue Book for the last year, and take such measures as may ensure the more regular transmission of it for the future.

Instructions re
transmission
of returns.

I have, &c.,

W. HUSKISSON.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 14, per ship Elisabeth.)

My Lord, Government House, 9th February, 1828.

I am sorry that circumstances have not permitted, before the present Moment, of my carrying into effect the Instructions contained in Earl Bathurst's Despatch to Sir Thomas Brisbane,

1828.
9 Feb.

Proposed
remission of
duty on spirits
to T. Icely.

dated the 5th of June, 1825, No. 34, respecting the Claim of Mr. Icely for a remission of Duty on Spirits imported by him in the years 1823 and 1824.

In preparing to act on those Instructions, which direct, "That the duty, which has been paid on account of the importation in question, be returned to Mr. Icely, and that, in the event of any part of the original Cargo still remaining in Bonded Store, the amount may be remitted," it was discovered that in fact no duty had been paid by Mr. Icely except on a very small quantity (not exceeding 300 Gallons), Mr. Icely having disposed of his interest in the Spirits, while they remained in Bond; and it was presumed it could not have been intended that the duty should be *wholly* remitted, Mr. Icely having applied only to be placed on a footing with Mr. Jacob, whose Spirits had not been admitted free of duty, but at a reduced rate.

I have adverted to the circumstance of the duty not having been paid by Mr. Icely, the Instructions appearing to have been framed under a contrary impression, in order to shew why I considered it necessary to institute an enquiry into the case generally, it being possible, as an erroneous impression had been received on one point, that misconception might have existed in others; not however that I considered the issue of the enquiry could materially affect the point, immediately alluded to, as whether Mr. Icely sold his Spirits subject to a certain duty, or whether he had actually paid that duty and disposed of his Spirits at a proportionately higher rate, does not appear important.

Board unable
to report.

Under the above circumstances, I was induced to refer the Matter to a Board, so far back as the Month of April, 1826. But I am sorry to add that the Board has not been able to come to any satisfactory conclusion, having, after long protracted deliberations, intimated that they could not agree on the grounds necessary to their drawing up a joint Report.

The proceedings, with a detail of which I am at present Unwilling to trouble your Lordship, have been exceedingly troublesome, the question being intricate and requiring the more consideration, as other persons similarly circumstanced to Mr. Icely were prepared to come forward with their claims as soon as his should be decided.

Settlement
of claims.

I have at length, however, disposed of the question, and in a Manner which I trust will appear satisfactory to your Lordship. I cannot perhaps better explain it than by transmitting for your Lordship's information Copy of a communication, which I made to Mr. Icely on the subject, together with a Copy of his Answer.

I have not yet received from Mr. Icely any further representation respecting the *Over proof Spirits*, alluded to in the above

letters; and he may perhaps relinquish the intention of forwarding it, as I have told him I did not conceive he had any Claim on that account, and I should state my opinion to that effect to your Lordship.

1828.
9 Feb.

It will be seen, by the enclosed Copy of a letter from Mr. Wilmot Horton to Mr. Icely and Mr. Icely's reply, that his claims were stated at the Sum of £5,880 10s. 8d. The Sum, which I have authorized to be issued to him, is £1,698 10s.; with which I am disposed to believe he is not ill satisfied; while the compensation he has received does not open a door to other Claimants, or at least only to a trifling amount; whereas had Mr. Icely's Claim been generally admitted, every other Individual, who had Spirits in Bond at the time, would have claimed a similar indulgence to that granted in his case.

Compensation
awarded to
T. Icely.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

GOVERNOR DARLING TO MR. T. ICELY.

Sir, Government House, 28th January, 1828.

Having again had under consideration your Claim for a remission of the Duty on the Foreign Spirits, imported by you in the years 1823 and 1824, in consequence of the indulgence, granted to Mr. Jacob on the Spirits which he imported from Bengal in the former Year, together with the Instructions of the Secretary of State on this subject, I now do myself the honor to acquaint you that I am prepared, in pursuance of The Secretary of State's intentions, to direct that the difference of Duty paid by you on the Foreign Spirits, taken out of Bond in the Year 1823, being part of the Spirits above alluded to, be refunded so as to place you on a footing in this respect with Mr. Jacob, who was allowed a remission of duty of 5s. per Gallon.

Compromise
of claims
proposed by
Governor
Darling.

I am also prepared to order, in pursuance of Earl Bathurst's Instructions, that a like remission of Duty at the rate of 5s. a Gallon shall be made on the rest of the Foreign Spirits, composing part of the Cargoes (termed in His Lordship's Despatch Original Cargo) imported by you in the Months of June and September, 1823, although you appear to have disposed of your Interest in the said Spirits previously to its being taken out of Bond.

I beg to observe that your Claim on account of the Rum imported by you *above proof* does not appear to come within the scope of my Instructions; and I do not therefore feel myself authorized to enter into that question.

I cannot close my letter without expressing my concern that circumstances have not permitted of this matter being brought

1828.
9 Feb.

to an earlier conclusion; you are aware of the difficulty, which has attended the investigation and which alone has occasioned the delay.

I have, &c.,

RA. DARLING.

[Enclosure No. 2.]

MR. T. ICELY TO GOVERNOR DARLING.

Sir,

Sydney, 8th February, 1828.

Reply by
T. Icely.

I do myself the honor to acknowledge the receipt of Your Excellency's Letter of the 28th Ultimo, announcing to me the conclusion Your Excellency has come to in my case, claiming a compensation for loss sustained on several importations of Spirits in the years 1823 and 1824. I regret very much that Your Excellency should not consider the other part of my Claim as coming within the scope of Your Excellency's Instructions from The Earl Bathurst; but I trust that Your Excellency will do me the kindness to forward to the Right Honble. the Secretary of State (with a favorable representation from Your Excellency) a further explanation as to the injury and actual loss I have sustained on the latter Cargo of Rum and Brandy, and I feel assured that His Lordship will see the extreme hardship of the case, and order me a remuneration for the loss experienced.

I beg Your Excellency will do me the honor to accept my best thanks for the great trouble and consideration, Your Excellency has taken in this very complicated case. I have, &c.,

THOMAS ICELY.

[Enclosure No. 3.]

UNDER SECRETARY HORTON TO MR. T. ICELY.

Sir,

Downing Street, 8th June, 1825.

Request for
statement of
claim.

With reference to your Correspondence, I request that you will give me this information. If orders were to be given to remit to you the Duties on the Spirits imported by you, in the same proportion in which they were remitted to Mr. Jacob, and if your Spirits were taken out of Bond, what is the Sum which would be thus restored to you?

I remain, &c.,

R. W. HORTON.

[Enclosure No. 4.]

MR. T. ICELY TO UNDER SECRETARY HORTON.

Sir,

London, 11th June, 1825.

Amount
claimed by
T. Icely.

I have the Honour to state, in reply to your enquiry respecting the difference of duties on the quantity of Spirits imported by me into N. S. Wales and those paid by Mr. V. Jacob, that it would amount to Five Thousand, Eight Hundred

and Eighty pounds, Ten Shillings and Eight Pence (£5,880 10s. 8d.), agreeable to particulars furnished, if the whole were taken out of Bond.

I have, &c.,

THOMAS ICELY.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Elisabeth.)

Sir, Government House, 9th February, 1828.

I have the honor to acquaint you, in reference to your letter of the 22nd of January, 1827, enclosing Copy of a Letter received from the Secretary at War that, in pursuance of the intimation contained in the latter, Staff Surgeon MacLeod has been appointed and has arrived in this Command.

Arrival of
staff surgeon.

I beg leave to state that the object of my letter of the 20th of July, 1826, was to obtain the Services of an *Apothecary*, who might be rendered Applicable to the Civil as well as the Military Service, which object is in no respect answered by the Appointment of a Staff Surgeon, the duties of which are of a nature totally distinct from those of *Apothecary*.

Previous
request for an
apothecary.

I have, &c.,

RA. DARLING.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 14, per ship Mermaid; acknowledged by Governor Darling, 12th August, 1828.)

Sir, Downing Street, 10 February, 1828.

10 Feb.

I have to acquaint you that it has been determined by His Majesty's Government that a proposition should be submitted to Parliament, in the course of the ensuing Session, to the effect that the expense of all Colonial Regiments, which have hitherto been maintained out of the Funds of the Colonies, should for the future be defrayed from the general resources of the Empire, upon the same footing with the regular Military Force of His Majesty.

Proposals re
maintenance
of colonial
regiments.

It is unnecessary that I should, upon this occasion, furnish you with an explanation of all the reasons, upon which this arrangement is grounded. It will be sufficient that you should understand that, so far as regards your own Government, it is not thereby meant to relieve the Colony of New South Wales from the obligation, which has hitherto been imposed upon it, of contributing a due proportion of its resources in discharge of the expense of its Military defence.

1828.
10 Feb.

Expenditure
on veteran
companies.

It is expected that a surplus Revenue will be created by the arrangement in question; it will be incumbent upon you, therefore, to take care that the amount of the charge, which Parliament may authorize to be provided for the support of the Royal Veteran Companies, which were formed for the Service in New South Wales, be duly carried to account, and that a sum, to the extent of such surplus, be paid by you into the Military chest in aid of the charge, incurred by this Country for the support of the above Corps; and you will not fail to acquaint His Majesty's Government, at as early a period as the information can be given, with the estimated surplus of the year, which has expired, in order that it may be brought to account among the ways and means of the succeeding year. I have, &c.,

W. HUSKISSON.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 15, per ship Mermaid; acknowledged by Governor Darling, 30th July, 1828.)

11 Feb.

Sir,

Downing Street, 11 Feb., 1828.

Charges
preferred by
archdeacon
against judge
Stephen.

I have the honor to acknowledge the receipt of your despatch of the 24 May last, transmitting the Copy of a letter addressed to you by the Archdeacon of New South Wales, accompanied by a written statement of the injury, which he considers himself to have sustained in consequence of certain proceedings, which had taken place in the Supreme Court of the Colony, and charging the Judge, who sat on the Bench, with an attempt to degrade the character of the Chief Ecclesiastical Dignitary of the Colony, by admitting irrelevant evidence against him, and excluding evidence tendered afterwards in his justification.

Questions
submitted to
crown law
officers.

A charge of this serious nature, acquiring as it does peculiar importance from the anomalous and unfortunate state of Society in New South Wales, could not be permitted by His Majesty's Government to remain unnoticed, particularly as, in the course of the Trial, some questions were addressed to the Archdeacon himself, the obvious tendency of which was to degrade his character by insinuations of the most offensive and disgusting description. Under these circumstances, I have deemed it advisable to obtain the opinion of the Law Officers of the Crown upon the following questions. First, whether, upon the trial of the action against the Magistrates, evidence affecting the character and conduct of the Archdeacon of New South Wales was introduced in an improper and irregular manner, and whether any evidence tendered upon the same subject was improperly rejected.

Secondly, whether, having regard to all the circumstances of the case and to the various documents adduced on either side, there is sufficient reason to conclude that, in the improper admission or rejection of any such evidence, the Judge was actuated by the desire to degrade the Archdeacon, or by any other corrupt or dishonorable motive?

1828.
11 Feb.

Questions
submitted to
crown law
officers.

With respect to the first of the above questions, it would appear from the report of the Attorney and Solicitor General that evidence was admitted on the part of the Plaintiffs in the action, which, according to the strict rules of practice in the Courts of Law in England, was not admissible, and that altho' the form of the Action and the particular circumstances of the case did certainly allow some questions to be asked, and some evidence to be received, tending to shew the connection between the Archdeacon and the three Magistrates, who were defendants (which evidence would have been altogether inadmissible if the Action had been in its form an Action of Trespass for false imprisonment, and not, as it was in point of fact, an Action for the Conviction of the Plaintiffs under a Penal Statute without reasonable or probable excuse) yet the examination of the witnesses was undoubtedly allowed to be carried to a greater extent, as to the private character and private concerns of the Archdeacon, than even in that view of the case was strictly warrantable.

Opinion of
crown law
officers *re*
evidence
admitted by
Judge Stephen.

As to the improper rejections of evidence, it is not considered that any was rejected which was material or relevant to the issue, nor which had any tendency to remove the aspersions, which had been cast upon the character of the Archdeacon.

The Archdeacon was examined in Chief for the Defendants without any interruption; and it was only when he was cross examined, and that too upon a transaction which had really no concern whatever either with the point at issue or with the Archdeacon's character, that the evidence was refused to be admitted; and the only other evidence, which was rejected, appears to have applied to the character of the Defendants, not to that of the Archdeacon.

From the opinion, which the Law Officers have expressed upon the second head of enquiry, there seems to be no reason whatever to conclude that, in the admission or rejection of evidence, the Judge was actuated by any desire to degrade the character of the Archdeacon, or by any other corrupt or dishonorable motive. It is to be regretted that the Judge should have allowed the admission of evidence, which had a tendency to reflect on the character and conduct of the Archdeacon; but this seems to have been done

Judge Stephen
exonerated
from charge
of corrupt
motives.

1828.
11 Feb.
—
Judge Stephen
exonerated
from charge
of corrupt
motives.

by him, not so much upon his own judgement, as because the Counsel for the Defendants, after objecting to such evidence on the score of irrelevancy, had waived any objection to its being received. In the Documents, which have been transmitted to England, it appears on the one hand to be expressly admitted by the Archdeacon himself that no improper motive operated in the mind of the Judge, and on the other hand the Judge, in summing up, used every effort in his power to prevent the Jury from giving any weight to the evidence, which had been improperly received, blaming himself for not having adhered more strictly to the rules of evidence.

Upon the whole, therefore, I am disposed to think that there is no ground for imputing any improper motive to the Judge for the part, which was taken by him in the trial in question; and I have only to express my hope that the Archdeacon will dismiss from his mind the notion that Mr. Stephen had any object in view beyond that of administering justice fairly between the parties concerned.

I have, &c.,

W. HUSKISSON.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch marked "Separate," per ship Mermald; acknowledged by Governor Darling, 30th July, 1828.)

Sir,

Downing Street, 11 February, 1828.

In my Dispatch of this day's date, relative to the charge preferred by the Archdeacon against Mr. Stephen of having permitted certain irregularities to take place in the examination of Witnesses on a Trial, in which the Archdeacon was implicated, the tendency of which was to degrade his character in the eyes of the Public, I have confined myself to the transactions, which occurred in Court connected with this subject; but other circumstances have arisen out of this question, which I cannot permit to pass without observation; and I regret to be under the necessity of adding that the conduct of Mr. Stephen, although it appears to be free from blame in as far as relates to any pre-meditated intention on his part to hold the Archdeacon up to the Public in an humiliating light, yet it does not appear equally free from censure in the course, which he subsequently pursued in his Communications with the local Government, when called upon to offer his remarks on the Archdeacon's Statement.

Although I do not consider the present to be a proper opportunity for adverting in detail to the transactions, which form

Remarks in
previous
despatch.

Censure of
Judge Stephen
for conduct
towards
government.

the subject of my Dispatch of 21st September last, upon which I shall hereafter have occasion to address you separately, yet I have not failed to notice with much concern that the same indiscretion on the part of Mr. Stephen, which has already called for my serious animadversion, has marked that Judge's subsequent proceedings with reference to the two following facts.

1828.
11 Feb.

Indiscretion of
Judge Stephen.

First, that of placing in the hands of Mr. Wentworth your letter and the Archdeacon's complaint, without apprizing you of his wish to do so, the party to whom that Communication was made being in connexion with the Editor of a Public Paper, in which, as was to be expected, the whole case immediately appeared.

Secondly, that of sending his vindication to you in a Scaled Packet, addressed to the Secretary of State, thereby precluding you from all knowledge of his defence, violating a settled rule laid down by His Majesty's Government, exhibiting a want of confidence in your justice, precluding the Archdeacon from the opportunity of a reply, and preventing you from making such comments on the Judge's defence as you might have thought necessary.

As it is impossible that the public Service can be carried on with effect, whilst the communications between the Public Functionaries in the Colony are distinguished by so much irritation and want of Courtesy, as have lately prevailed, I am commanded by His Majesty to desire that you will strongly inculcate upon Mr. Stephen the importance of his adopting a more conciliatory course, and one more unreserved and confidential in its nature, rather than, by persevering in the same formal and distant tone, to perpetuate the unfortunate differences which have already occurred.

Censure to be
communicated
to Judge
Stephen.

I have, &c.,

W. HUSKISSON.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 15, per ship Elisabeth.)

My Lord,

Sydney, 11th February, 1828.

I do myself the honor to submit to your Lordship the accompanying Copy of a Letter, which I have received from the Archdeacon, bringing under my consideration the inadequacy of the present provision for the Clergy; and, fully concurring as I do in the expediency of improving the situation of these Gentlemen, I feel it to be my duty on every ground to recommend the subject to your Lordship's favorable consideration.

Proposals by
archdeacon re
improved status
for clergy.

It does not appear necessary in this place to repeat the Archdeacon's Statement and observations. Every one must be aware

1828.
11 Feb.

Impoverished
condition of
colonial clergy.

of the importance of the Clergy being placed on a respectable footing in point of Income. It can nowhere be more necessary than here, and those, who are acquainted with the Colony, must be satisfied that a Salary of £250, the Sum allotted to the newly appointed Chaplains (who have no Glebe or any allowance on that account), is totally inadequate to the maintenance of that respectable Station in Society, which their profession renders it desirable they should fill. Those, who might confine themselves to the Discharge of their public duties, would unavoidably become embarrassed in their circumstances, as others have who have possessed even more extensive means, while such of them, as might be desirous to make provision for their Families or to avoid pecuniary difficulties, would be anxious to obtain Land.

Objection to
land grants for
clergy.

It is, I think, desirable not to grant land to the Clergy, as the necessary attention to Agriculture would be likely to interfere with the performance of their Spiritual duties. But, in withholding this indulgence, it is only fair to consider the motive, which may induce the desire on their part to improve their circumstances; and that of making provision for their Families is so natural that, in not allowing them the means, common to other Individuals employed by the Government, it is only just and reasonable to satisfy them that their Wives and Children will not be reduced to want, when deprived of their support.

The manner, in which I should propose accomplishing this object, would be attended with but little Expense to the Church Fund, and must I think prove beneficial to the Colony by establishing a respectable Class of Settlers in it.

Criticism of
archdeacon's
proposal *re*
salaries.

The Archdeacon's first Proposition that the Income of the Clergy should be regulated by length of Service, combined with extent of Labour, appears, I think, unnecessarily complicated. For instance, how is the Salary to be regulated, when the Individual has served a proportion of his time in each Division, The Second commencing at the Amount, at which the first Division terminates, and the third at the termination of the second, the maximum of each Division requiring a period of 16 Years. Besides, it must be kept in mind that a Clergyman of long Service would not generally speaking be the most competent to the charge of a large Flock widely extended; and thus a young Man of greater physical powers, without any claim on the score of Service, would (taking the 3rd Division for example) commence at the maximum of the second Division, the reward to others of 16 Years' Service. I should say that the Salaries of the 3rd Division are too large, as I do not suppose they are calculated with a view to furnishing the means of future provision for the

Families of the Clergymen, employed in it, any more than in the cases of the two other Division, the periods of Service being equal throughout.

1828.
11 Feb.

With respect to the Archdeacon's second proposition that the Chaplains should commence with a Salary of £400 and receive a Grant of 1,280 Acres of Land at the end of five Years' Service, with a similar Grant at the expiration of 10 Years' Service, and an addition to their Salary at that period of £200, it appears to me objectionable, as far as relates to remunerating the Clergy by means of Land, while I at the same time consider that the increase of Salary proposed is sufficient of itself without the Land.

Land grants
proposed by
archdeacon.

Having given the subject the best consideration in my power, I would submit to your Lordship, with that deference which I must naturally feel in matters of this nature, the following Sketch as an Outline of Regulations to be established for the remuneration of the Clergy in New South Wales, vizt.

Stipends
proposed
for clergy
by governor.

1st. The Salaries of all Chaplains to commence at £400.

2nd. At the expiration of seven Years' Service to receive an addition of £100.

3d. Do. at the expiration of 15 Years' Service £100, making the largest Salary £600,

which I think would be sufficient, considering they are allowed a good House and the use of 20 Acres of Land adjoining their Church.

I would further allow the Clergymen resident in *Sydney*, if of less standing in the Service than seven Years, the Sum of £100 a year (in consequence of the extra duties in the Jail, Hulk, etc.) and additional Expence for living, etc., to which they are subjected. If longer than 7 Years in the Service, I would in that case limit this special allowance to £50 a Year.

As I propose that the Clergy should not in future be allowed Land, and the Income now recommended would not be sufficient to enable them to support their Families in a respectable manner and make the necessary provision for their future comfort, I would submit that the *Sons* of Clergymen, on attaining the Age of *nineteen*, should, on their binding themselves to settle on the Land, receive a Grant of three Square Miles or 1,920 Acres, and that their Daughters should receive, as a portion from the Crown, two Square Miles or 1,280 Acres on attaining the age of eighteen.

Land grants
proposed for
children of
clergy.

The Sons, as I have stated above, would form a very respectable Class of Settlers, and the Land possessed by the Daughters would probably prove the means of their marrying more suitably to their Situation.

1828,
11 Feb.

Fees to be
paid to
church fund.

Land for
children of
clergy.

Return
showing salaries
of clergy.

With respect to the *Widows* of Clergymen, I should propose allowing them a pension of £100 a year.

Under the Regulations above proposed, all *Fees* would be paid over to the Church Fund. And the Rule might be made applicable to the elder Chaplains without difficulty, allowing each the Salary, to which he would be entitled by length of Service, and deducting from the provision to be made for his Children such Land, as he may have received from Government as a free Grant on his own Account.

Should a Son, who had received Land, afterwards enter the Civil Service, the Land so received should be deducted from any Grant, to which his Situation in the Civil Service might be considered to give him a claim.

I am not prepared to propose that the land to be given to the Children of the Clergy should be taken from the Seventh of the Territory allotted for the support of the Church and School Establishment. Should your Lordship approve of the suggested Arrangement, you will be best able to determine this point.

I beg to enclose, as it may be satisfactory to your Lordship, a Statement shewing the amount of the Income of the existing Chaplains under the present and proposed Arrangements. In the cases of the Reverend Mr. Cartwright and the Reverend Mr. Wilton, who are employed at the Male and Female Orphan Schools, I should certainly propose but little if any addition to the new Salaries. *Fifty pounds a Year* would, I think, be ample, as, if employed in the ordinary duties of their profession, it would be necessary for them constantly to visit their Parishoners, a duty which they are not required to perform at present; and they are certainly saved no inconsiderable Expence, by living in the retired manner they do at the respective Establishments in the Country.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

ARCHDEACON SCOTT TO GOVERNOR DARLING.

Sir,

Sydney, 2nd August, 1827.

I take the liberty of calling Your Excellency's attention to the state of the Clergy of these Colonies, both of which are included in the Archdeaconry, respectfully requesting that it may be submitted to the consideration of His Majesty's Government in the hope that some assistance will be afforded.

In the early time of this Colony, when it was difficult to procure Clergymen to come here, there were promises made and inducements held out, in addition to their Salaries, which, had they been fully complied with, would have doubled the Stipend paid

Report by
archdeacon
on clergy.

Inducements
offered to
early clergy.

them; and these considerations induced Mr. Marsden, Mr. Cowper and Mr. Cartwright to leave England on such appointments.

1828.
11 Feb.

About the year 1814, an Order was received from the Secretary of State to discontinue to Civil Officers the allowances of Fuel, Rations and Forage for Horses, and also Rations for Servants; they were discontinued for some time to the Clergy; but, upon a representation being made that these allowances were promised in addition to their Salaries by Government, they were continued for some time longer, but Fuel and Rations to Servants were excepted. After a space, the whole was withheld, and so it has continued to this time without any compensation whatever having been made to them; and, when Lord Bathurst was kind enough to raise the Salaries of the Revd. Samuel Marsden to £400 per annum from £350, Mr. Cowper's from £260 to £300. and Mr. Cartwright's to £300 from £240, I am fully warranted in stating that the former promises and inducements, held out to these Gentlemen by Government, did not enter into His Lordship's contemplation. I state this, because I was honoured with several interviews with His Lordship on the subject; and, therefore in making the then additions, although an apparent encrease to their Stipends, yet in fact it was the reverse, inasmuch as these allowances, on very moderate averages, cannot be reckoned at less than £90 to £100 per annum; consequently, by withdrawing them and making the additions, there is a deficit of from £40 to £60, which, had His Lordship been then aware of, I feel assured it was not his intention, especially after so many years Service and of a nature no one in England can justly appreciate. It is true, Sir, that the Colony has much changed since the times I allude to; but, in many respects, it has not, especially in the necessary Articles of Life, being the produce of the Colony and of Europe. It is true that the prices of Meat and Flour to Government are or have been very low; but to the consumer they have always been double, and oftentimes more; with regard to articles from England, until within a few Years not only were the Merchants here of small Capital and obliged to sell for a smaller profit, to enable them to make their remittances, but the Civil Officers and many Settlers were allowed to have sent out in the Convict Ships, Free of Freight, etc., articles of Consumption to a certain extent; the Captains were allowed to bring investments for Sale, and the middle Man (now so common) scarcely existed. At present, whilst the Government Contracts are made low, the Consumer is obliged to pay very high. All Freight of Goods by Convict Ships is prohibited, as well as the Investments of these Captains, and a large circulation of Paper, together with the great facility afforded by the Banks for

Salaries and
allowances
of Revd.
Marsden,
Cowper, and
Cartwright.

Altered
conditions
in colony.

Increase in
cost of living.

1828.
11 Feb.

Increase in
cost of living.

discounting what are termed "Accommodation Bills," enable Speculators and Adventurers (middle men) to hold Articles of Consumption, until they obtain very large profits, and thus in fact reduce the fixed Income of the Stipendiary. These facts I believe are fully within Your Excellency's own knowledge, as well as the enormous Profits, which the Middle Man makes on his Sales to the Consumer, compared to those which the Importer receives on his sales to the Middle Man.

There are also many other causes, which operate in this Colony against the Consumer in a way not easily explained to a Non-resident, especially one who cannot form an idea of the Arts and practices in a Convict Population, or what links there are of connection amongst that Class, who have risen to opulence through fraud of the most nefarious and immoral nature. To Your Excellency it is well known with what facility a considerable Salary, in some way or other, can be obtained in this Colony, and that Clerks of any moderate talents and even in a state of bondage can obtain from £200 to £300 a Year with great facility; and these have no appearances to keep up.

Position to be
maintained
by clergy.

It is perhaps more necessary in such a Colony as this, where reform of conduct and example of those in the Government, especially of the Clergy, that such examples should be of the most spotless nature; and if, by the Expenses of a large Family, the high rate of living and the smallness of Stipend, the Clergy fall unwillingly but necessarily into Debt, they place themselves under obligations to Persons, whom they ought to keep at a distance. His Majesty's Government do not stand in need of any arguments of mine to satisfy them of the great and serious injury there is done, both to Society and the Individual, and yet without any fault on the part of the latter.

To the Labours of the Clergy and the manner in which those Labours are performed, I feel assured Your Excellency can conscientiously state your entire approbation especially of those, who have been the longest time in the Colony.

I very humbly submit, through your Excellency, for the consideration of His Majesty's Government, that the principle to be laid down and acted on should be *a combination of Labour with length of Service* and that, although The King's Warrant empowers the Archdeacon to place a Chaplain in such places as he thinks proper, yet he should be directed to bear this principle always in mind, as well as a due qualification, when he removes a Chaplain. With this preliminary, I respectfully submit the following scale, on which the Chaplains should be placed:—

Stipends
proposed
for clergy.

1st Division.—Population not exceeding 1,066.

Years served 0, Stipend, £365; 5, £402 10s.; 10, £440; 16, £477.

2nd Division.—Above 1,066, not exceeding 4,264.

Years served 0, Stipend, £477 10s.; 5, £533; 10, £588 10s.;
16, £644.

1828.
11 Feb.

Stipends
proposed
for clergy.

3rd Division.—Above 4,264.

Years served 0, Stipend, £644 10s.; 5, £666 10s.; 10, £935;
16, £957 10s.

Land grants
proposed.

Should this plan appear too complicated, I would then submit that a Salary of £400 per Annum should be given on the appointment taking place, and that, at the end of five Years, a proportionate Grant of Land be made of 1,280 Acres, and a further Grant of the like quantity at the end of ten Years, with an addition of £200 per annum. The object, I kept in view in my former suggestion, was a combination of Labour and length of Service, affording the opportunity of a Chaplain of many Years' standing, and consequently from Age less capable of heavy duty than a younger Man, being removed to a Parish less populous. To provide for this, the 27 Section of the Charter* directs that the Revenues should be applied in payment of such Stipends, "as may by Us, Our Heirs and Successors, be granted to Chaplains or Clergy of the said Colony"; hence whatever scale may be adopted by His Majesty's Government, it would be signified through the Secretary of State to the Governor as The King's pleasure; and this the Governor should be enjoined to communicate to the Trustees, who would necessarily be required to appropriate a portion of their Revenues for these purposes.

Payment
of stipends.

In concluding this application to His Majesty's Government for the Clergy, I ought also to state to Your Excellency that I have now before me the allowanees made to the Wesleyan Missionaries, a class of Persons (without meaning any disparagement to them) very far below the generality of the Clergy in acquirements or in conduct; these amount to £329 per Annum *besides medical attendance and a Pension to the Widows*. That the Scots Clergyman, who has but a very small Flock to attend to, and who has not been appointed *more than two Years* and has no Schools, receives by order of His Majesty's Government £300 *per Annum*; and that, although the Roman Catholic Chaplain has but £100 per annum, yet it is well known that, by some means or other, Mr. Therry has acquired considerable property, and receives what are termed in the Roman Catholic Church "Retributions" or Fees to a considerable amount; and neither of them have any sort of appearance to keep up, nor are they under any apparent control; whilst the constant drains for Subscriptions to Schools, Charities, etc., fall very hard upon the Clergy of the established Church.

Salaries and
allowances for
clergy of
other churches.

I have, &c.,

T. H. SCOTT.

* Note 180.

1828,
11 Feb.Return of
clergy of
established
church.

[Enclosure No. 2.]

RETURN of the Clergy in New South Wales on the 12 February, 1828.

Year of Appointment.	Name.	Stipend.	Extra Emoluments.	Total Income.	Proposed Allowances.
1793	Rev. S. Marsden..	£ 400	£100 in lieu of a Glebe, £50 for attending the Female Factory, and £25 in Fees	£ 575	Above 15 years
1806	" W. Cowper...	300	£100 in lieu of a Glebe, £50 for attending the Jail, and £50 in Fees	500	do. and being employed in Sydney
1809	" R. Cartwright	300	£100 in lieu of a Glebe, and £150 as Master of the Male Orphan School, with rations for himself and Family	550	{ do. and Master of Male Orphan School
1811	" H. Fulton ..	250	£100 in lieu of a Glebe, and £5 in Fees	355	{ Above 15 years
1818	" R. Hill	250	£100 in lieu of a Glebe, £50 for attending the Hulk Prison, and £80 in Fees	480	{ Above 7 years and employed in Sydney
1818	" J. Cross	250	£100 in lieu of a Glebe	350	{ Above 7 years
1819	" T. Reddall...	250	£100 in lieu of a Glebe, and £13 in Fees	363	do.
1824	" T. Hassall...	250	£5 in Fees	255	Under 7 years.
1824	" F. Wilkinson	250	.....	250	do.
1824	" M. Mears. ...	250	£13 in Fees	263	do.
1825	" J. E. Keane..	250	.....	250	do.
1826	" C. P. Wilton	250	£150 as Master of the Female Orphan School and Rations for himself and Family	400	do. and Master of Female Orphan School
1827	" E. Smith	250	£20 in Fees	270	Under 7 years
1827	" J. Vincent ..	250	.....	250	do.
			£ 5,111	£ 6,900	

* The Rev. Mr. Cartwright and the Rev. Mr. Wilton receive, in addition to the above, Rations for themselves and Families.

UNDER SECRETARY HAY TO GOVERNOR DARLING.*

1828.
12 Feb.

My dear Sir, Downing Street, 12 February, 1828.

The dispatch, which you will receive by the present opportunity respecting Mr. Dangar, was written previously to the arrival of that person in England, and to his presenting a Memorial to the Secretary of State appealing against the proceedings adopted by the Colonial Government towards him. Mr. Huskisson sees no ground for revising the decision, which has been already taken in Mr. Dangar's case, or indeed to enter upon the consideration of the Statements contained in his Memorial, until at least your Report upon the Duplicate, which he states to have left with you, shall have arrived.

Decision
in case of
H. Dangar
withheld.

As, however, Mr. Dangar complains that he has been deprived of his "Private Property," in addition to the loss of his Office, Mr. Huskisson thinks it advisable to inform you that, if Mr. Dangar has paid for the 1,800 Acres alluded to in your dispatch,† or if he has expended any Capital upon this property upon the faith of any promise, held out by the Colonial Government, it would not appear to be right to deprive him of the same, without making to him a reasonable compensation for any expense, which he may have thus incurred.

Instructions re
land purchased.

I am, &c.,

R. W. HAY.

UNDER SECRETARY GOWER TO GOVERNOR DARLING.

(Despatch per ship Mermaid: acknowledged by Governor Darling,
20th August, 1828.)

Sir, Downing Street, 13 February, 1828.

13 Feb.

I am directed by Mr. Secretary Huskisson to transmit to you the accompanying Copy of a Memorial, which has been addressed to this Department by an Individual, named "Oakey," relative to a Grant of Land, which he states to have been held by him in New South Wales, and of which he states himself to have been deprived, it having been resumed by the Colonial Government; and I am to request that you will state the particulars of this case for Mr. Huskisson's information.

Transmission
of memorial
from
J. Oakey.

I have, &c.,

F. LEVESON GOWER.

[Enclosures.]

[These were

- [1] Memorial of Joseph Oakey, master of H.M.S. Tees, 18 January, 1828.
- [2] Certificate by J. Oxley, 23rd June, 1824.
- [3] Statement of stock by W. Dun.

* Note 6. † Note 181.

1828.
13 Feb.

[4] W. Dun to A. M. Clay, 6 February, 1827.

[5] A. M. Clay to W. Dun, 1 February, 1827.

[6] W. Dun to J. Oakey, 2 April, 1827.

Copies of these papers will be found in a volume in series II.]

UNDER SECRETARY GOWER TO GOVERNOR DARLING.

(Despatch per ship *Mermaid*; acknowledged by Governor Darling, 29th August, 1828.)

14 Feb.

Sir,

Downing Street, 14 February, 1828.

Grant of
money to
A. O'Reilly.

With reference to the communication,* which was addressed to you in the Year 1824, stating the circumstances under which an Individual, named Anthony O'Reilly, who had been prosecuted by the Commissioners of Stamps at Dublin for forging Dies to resemble the Stamps used in that Office, was sent to New South Wales, I am directed by Mr. Secretary Huskisson to inform you that, in consequence of a representation which has been made by the relatives of that Individual of the destitute state in which he now is, the case has been again under the consideration of the Lords Commissioners of the Treasury, and their Lordships having recommended that a further Sum of £100 should be granted to him to enable him to settle in some useful occupation, I am to convey to you Mr. Huskisson's authority for paying to Anthony O'Reilly the amount in question.

I have, &c.,

F. LEVESON GOWER.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 16, per ship *Elisabeth*; acknowledged by Sir George Murray, 11th November, 1828.)

My Lord,

Government House, 14th February, 1828.

Salary of
A. M. Baxter.

I do myself the honor to transmit for Your Lordship's consideration the Copy of a letter, which has been addressed to me by Mr. Baxter, the Attorney General, on the subject of his Salary, which he informs me he understood before he left England to have been fixed at £1,500, tho' notified to me, in the Despatch of Your Lordship's predecessor, No. 37, dated the 20th May, 1826, to be £1,400 a year.

I take the opportunity of stating that Mr. Baxter has been accommodated with Chambers in the Court House, And that, in consequence of his urgent application, I have authorized his receiving Stationary from the Government Stores until Your Lordship's pleasure shall be known.

I have, &c.,

RA. DARLING.

* Note 182.

[Enclosure.]

1828.
14 Feb.

ATTORNEY-GENERAL BAXTER TO GOVERNOR DARLING.

Sir, York Street, Sydney, 13th February, 1828.

In reference to a conversation I had with Your Excellency, in which it was stated that my Salary was only £1,400 per Annum, and, having previous to my departure from England understood from the Under Secretary of State that it had been raised from Twelve to Fifteen hundred a year, I have the honor to request that your Excellency will bring the subject under his Lordship's consideration, feeling assured that some misunderstanding has occurred in the reduced Salary notified in Lord Bathurst's Despatch.

I have, &c.,

ALEX. M. BAXTER.

UNDER SECRETARY GOWER TO GOVERNOR DARLING.

(Despatch per ship Mermaid.)

Sir, Downing Street, 15 February, 1828.

15 Feb.

I am directed by Mr. Secretary Huskisson to inform you that Paymaster Terence Murray, who is now residing in New South Wales, has obtained permission to dispose of his Commission under the regulations,* which have been promulgated by His Majesty's Government for the encouragement of Officers of the Army to become Settlers in New South Wales and Van Diemen's Land; and I am to desire that you will extend to that Officer the privileges, to which he will be entitled in conformity with those regulations.

I enclose a Copy of a Letter from the Secretary to the Commander in Chief, by which you will perceive what have been the Services of Paymaster Murray.

I have, &c.,

F. LEVESON GOWER.

[Enclosure.]

LORD FITZROY SOMERSET TO UNDER SECRETARY HAY.

Sir, Horse Guards, 12th February, 1828.

Paymaster Terence Murray of the 48th Regiment having sold his Half Pay for two Two thirds of the value of a Company, under the provisions of the General Order of the 8th June, 1826, respecting Officers who are desirous of becoming Settlers in New South Wales and Van Diemen's Land, I am directed by the Commander in Chief to annex a Statement of his services, and to acquaint you for the Information of Mr. Huskisson that, as Paymaster Murray is actually in the Colony, Messrs. Greenwood, Cox and Co. have been desired to pay to him the full Sum of

* Note 183.

1828.
15 Feb.
Military
services of
T. Murray.

£1,200, and His Grace requests that Mr. Huskisson will communicate to the Governors such Instructions as he may think proper.

I have, &c.,

FITZ ROY SOMERSET.

Services of Paymaster Murray.

Paymaster, 48th Foot 2 Novr., 1815.
„ ½ pay 3rd Sep'r, 1826.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 17, per ship Elisabeth; acknowledged by Sir George Murray, 30th August, 1828.)

My Lord,

Government House, 15th February, 1828.

Death of
G. G. Mills.

I have to report the decease of Mr. G. G. Mills, the Registrar of the Supreme Court, which took place yesterday. I have the honor to acquaint your Lordship that I have, in consequence, nominated Mr. John Stephen, junior, Son of Mr. Justice Stephen, to succeed to that situation, and I beg to recommend his appointment to your Lordship's favorable consideration.

Appointment of
J. Stephen, jr.,
as registrar ;

I have apprised Mr. Stephen that, under the regulation contained in Earl Bathurst's Despatch, No. 65, of the 11th of September, 1826, it will not be in my power to issue to him more than half Salary as Registrar, Vizt. £400 a year.

and of
G. M. Bowen as
commissioner
for apportion-
ing territory.

I have further the honor to acquaint your Lordship that I have appointed Mr. Bowen, the subject of my Despatch of the 23rd July last, No. 75, to the Situation of Commissioner for Apportioning the Territory in the room of Mr. Stephen. Mr. Bowen is well qualified for this Situation, and has, by his Zeal and Ability in the performance of his duty as Assistant Surveyor, proved an acquisition to that Department.

I avail myself of this opportunity of stating that I am now making arrangements, which will render the Commissioners more immediately a Branch of the Survey Department than they appear hitherto to have been considered, and they will consequently be more useful and available.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Elisabeth.)

Sir,

Government House, 15th February, 1828.

Despatch
acknowledged.

I have the honor to acknowledge the receipt of your letter of the 9th of August last, in reply to mine of the 2nd of March, on the subject of the Stores supplied by the local Government to

His Majesty's Ships of War arriving on this station; and I enclose herewith the Copy of a letter from Deputy Commissary Wemyss, with the following accounts of the Stores issued, as required by your letter, Vizt.

1828.
15 Feb.

Stores supplied
to ships of war.

1st. Account of Provisions supplied by the Commissariat Department from 25th December, 1825, to 24th June, 1827, to His Majesty's Ships of War.

2nd. Account of Stores supplied by the Commissariat during the same period.

3rd. Account of Provisions supplied by the Commissariat from 25th June to 24th December, 1827.

4th. Account of Stores supplied by the Commissariat during the same period.

It will be perceived that the Issues have been considerable, and that the Colonial Government has been exposed to some inconvenience from the circumstance of the Stores, received for our own Vessels, having been applied to the use of the Ships of War. My principal object in representing the circumstance was with the view that a Separate Establishment should be found for the Navy, so as to prevent the inconvenience, which is felt by one Service supplying another, without being aware of the regulations under which the Supplies should be furnished; and I still think it desirable, whenever such an Establishment can be conveniently found. As however there might be some difficulty in finding the necessary means of accommodation, as well as Expense, it may be dispensed with at present, and the local Government will endeavour to furnish such supplies as may be required, and cannot be procured in the Market.

I do myself the honor to forward for the information of the Secretary of State Copy of a Memorandum, drawn up by Deputy Commissary General Laidley at my desire, on the subject of the course usually pursued by the Navy at other Stations in obtaining Provisions, etc.; and you will perceive that care has been taken to insure to the Ships of War an opportunity of obtaining all supplies of this nature from the same Contractors and on the same terms, as they are obtained by the Colonial Government.

I have, &c.,

RA. DARLING.

[Enclosures.]

[Copies of the letter from W. Wemyss, dated 11th February, 1828, of the memorandum from J. Laidley, dated 18th January, 1828, and of the four detailed accounts of stores and provisions, will be found in a volume in series VII.]

1828.
15 Feb.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Elisabeth; acknowledged by Sir George Murray,
30th August, 1828.)

Sir,

Sydney, 15th February, 1828.

Death of
G. G. Mills.

I beg to inform you, in reference to my Despatch of this date, No. 17, announcing the decease of Mr. Mills, Registrar of the Supreme Court, that that Gentleman put an end to his existence in the manner pointed out in the Report of the Inquest, held on the Body, as appears in the enclosed Number² of the Sydney Gazette, Page 2, Column 4. I understand that Mr. Mills, who was a Man of profligate Character and dissolute habits, was deeply involved in debt, and that he was besides security to a large amount for his friend, Mr. Mackaness, a man of similar Character. In addition to which, it appears he had lately received letters from Home of a distressing nature, which, coupled with the impossibility of extricating himself from the difficulties which immediately surrounded him, he appears to have been driven to desperation, and put an end to his existence.

Example
afforded by
G. G. Mills and
J. Mackaness.

I am not without hope that the fate of Messrs. Mills and Mackaness, whatever degree of commiseration the frailties of human nature may excite, will not be without effect. The most inconsiderate must see that these men, placed in Situations to command respect, have, by their want of principle and profligate course of Life, reduced themselves to a State of indigence at the expence both of public and private Character.

There are persons here, and of no inconsiderable Station, who would instance the fate of Mr. Mills as a proof of the unhappy State of the Colony. This, however, can hardly answer their purpose, as you will not be misled by any such absurd insinuations. Besides, the premises are untrue; a few indeed of the immediate Associates of Mr. Mills and Mr. Mackaness may feel their perilous situation, and either suppose or be desirous of considering the State of the Colony generally to be similar to their own.

Tranquillity
of colony.

I can, however, confidently assure you that no country can exhibit more satisfactory proofs of tranquillity and prosperity than this Colony. The people generally are too wise to allow the fate of such Men, as those I have mentioned, or even of Doctor Douglass, to interfere with their pursuits, and few indeed have expressed or felt surprize at it.

You will, I am sure, excuse the desire on my part, as it is not irrelevant to the present matter, to point out how little these people are thought of. I, therefore, venture to trouble you with an instance in proof of my assertion. Mr. Mackaness, on receiving the notification of his discontinuance in Office, called by

public Advertisement a meeting of those Individuals, who had signed the Requisition for the public meeting* which took place in January, 1826, and appointed "Cumings' Hotel" for its taking place. Cumings, being about to remove, excused himself from receiving the Requisitionists. Mr. Wentworth's Office was then appointed; and, when the Individuals collected, the Persons and Numbers were so insignificant that they dispersed without proceeding to the object for which they were assembled. The persons present were Messrs. Mackaness, Wentworth, Wardell, and Hall the Editor of the "Monitor," two Young Men Sons of the late *Colonel Johnstone*, and two other Persons equally contemptible, whose names I do not immediately recollect, making *eight* altogether. A Meeting, which was to mark the Sense of the Colony and to cover the Government with shame for the injustice of its proceedings towards their venerated Sheriff! I shall beg leave to couple with this trait of the public feeling for Mr. Mackaness, and his Brethren in disgrace, an instance which will serve as some proof of the estimation, in which Mr. Wentworth is held by those whom he has considered as his Supporters, and of whom he would fain be supposed the Leader.

The *fortieth* Anniversary of the establishment of the Colony was celebrated lately, as on former occasions, by a public Dinner given by the Emancipists. The Chair was taken by Mr. Therry, an Individual of this Class, and Toasts of the most loyal description were given from His Majesty down to the Members of the local Government, and were drank with every expression of respect and dutiful Attachment. A young Man of the name of Rose, a Clerk in Mr. Wentworth's Office, conceiving that due honor had not been paid to his Patron, at length proposed his Health, which the Company *repeatedly* rejected, declaring they would not allow the Harmony of the Society to be disturbed by any Party feeling; when the proposer of the Toast drank it alone, and immediately retired.

I do not produce these instances as proofs of the popularity of my Government, which in truth I have never been anxious to obtain; but I know that exertions are not wanting here to blacken it, and that the influence of high Station and consummate Craft, not to misapply the term ability, is actively engaged in accomplishing this end. It is perhaps natural, when Men cannot justify their own conduct, to impeach others as a cloak to their misdeeds.

I have, &c.,

RA. DARLING.

[Enclosure.]

[*This was a copy of the issue of the "Sydney Gazette," dated 15th February, 1828.*]

1828.
15 Feb.

Meeting called
by J.
Mackaness.

Attendance
at meeting.

Dinner given
by emancipists.

Health of W. C.
Wentworth
proposed.

1828.
16 Feb.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 18, per ship Elisabeth.)

My Lord, Government House, 16th February, 1828.

Despatch
acknowledged.

I have the honor to acknowledge the receipt of your Lordship's Circular Letter No. 4, dated the 1st of July last, which arrived by the Woodlark on the 26th of last Month.

Transmission
of abstracts
of accounts.

It has not been found practicable in so short a period to have the Accounts of the Revenue and Expenditure for the three last years prepared in the detailed form required*; but I do myself the honor to transmit for your Lordship's information an Abstract, showing the several heads, with Notes on such of the heads as appeared to require Explanations.

It will be observed that, in some Cases, no sums are stated in the Expenditure for 1827, which is occasioned by the transfer of such heads of Expense to the Convict Branch of the Service, now transferred to and paid by the Commissariat. I presume, however, it is intended that the Accounts called for should state the whole of the Civil Expenditure of the Government. But time has not permitted of the information necessary for this purpose being collected and put into proper form. The Departments concerned are now employed in preparing it, and I hope to be able to transmit by an early opportunity the Account, made out in a Manner to answer the object intended. In the mean time, the enclosed Abstract will I trust prove useful.

I have, &c.,

RA. DARLING.

[Enclosure.]

[A copy of this abstract will be found in a volume in series II.]

GOVERNOR DARLING TO RIGHT HON. W. HUSKISSON.

(Despatch per ship Elisabeth.)

My dear Sir, Sydney, 16 February, 1828.

Congratulations
tendered to
secretary of
state.

Although not yet officially informed that I am now under your Orders, I shall not on that account delay my Congratulations on Your Appointment to so distinguished a Station as that of Minister for the Colonies. It is an event which, independent of every public consideration, is to me personally particularly gratifying, and I esteem it no common proof of my good fortune to be placed, in this stage of my public career, under the direction of a person, who was so instrumental to its commencement. I am not a little apprehensive you may think my Government a troublesome appendage. It will, however I trust, be less so in future than it has hitherto been. The

* Marginal note.—The General Abstract forwarded with my Despatch No. 27/1828 supersedes the necessity of this Enclosure.

measures, that have been adopted, and those which I trust are in progress, will, I have no doubt, have a salutary effect, and bring those persons, who have suffered themselves to be misled, to a better sense of their duty. I shall confine myself at present to assuring you that this is a most interesting Colony, and highly deserving your attention. Should you wish for any particular information respecting it, Colonel Dumaesq, my Brother in Law, who was my private Secretary, is now in England, and will I am sure be most happy to receive Your commands on this or any other subject.

1828.
16 Feb.

Reference to
be made to
H. Dumaesq.

I have, &c.,

R.A. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

4 Despatch marked "Private," per ship Elisabeth; acknowledged by Sir George Murray, 30th August, 1828.)

My dear Sir,

Sydney, 16th February, 1828.

Mr. John Stephen, whom I have mentioned by this opportunity as having been appointed to succeed Mr. Mills as Registrar of the Supreme Court, has called here this Afternoon to inform me that the Chief Justice has demurred to admit him to that Office on my appointment, and has taken till Monday to consider whether he shall swear him in. I am, however, satisfied he has no intention of persevering, and has merely resorted to this proceeding to shew his contempt for the Government. If you refer to the Enclosure from Mr. Norton, which accompanied my private letter of the 1st August last, you will observe Mr. Forbes is stated to have expressed himself in Court to the following effect: "That it was not to be endured that the words of the Act, 'Attorney General or other person to be appointed by the Governor,' could invest any person, the Governor might think proper to appoint, with the great powers and discretion exercised by that Officer in England."

Appointment
of J. Stephen
postponed by
F. Forbes.

Opinion of
F. Forbes re
power of
governor.

I shall not take any step at this moment, being pretty confident he will not venture to persevere in refusing to admit Mr. Stephen. But should he do so, I consider that my Commission gives me the power to swear him in, as it does to make the Appointment; and I shall accordingly put him in possession of his Office. My Commission* runs thus:—"And we do hereby authorise and empower you to constitute and appoint Justices of the Peace, Coroners, Constables, and other necessary Officers and Ministers in our said Territory and its Dependencies, *for the better administration of Justice and putting the Law into execution*, and to administer or cause to be administered unto them such Oath or Oaths, as are usually given for the performance and execution of their Offices and Places."

Action to be
taken.

Power of
governor under
commission.

* Note 155.

1828.
16 Feb.

Appointment of
J. Stephen under
consideration
of F. Forbes.

I understand, on Mr. Stephen producing his Patent this morning in Court, in order to his being sworn in (his Appointment having been notified to the Chief Justice yesterday), that Mr. Forbes called for the Charter,* from which he read the 9th Section, and observed that, according to the terms of that section, a Warrant under the Royal Sign Manual would be necessary to the Appointment, which could not have been received, as Mr. Mills had died only two days since; he should, therefore, take time to consider whether he should acknowledge the Appointment of Mr. Stephen.

Contradictory
procedure
recommended
by chief
justice.

I need not instance the facility, with which Mr. Forbes makes and unmakes Laws by giving such Interpretation to them, as suits the convenience of the moment. The proofs are sufficiently numerous, without bringing forward the Appointment of a second Judge at his recommendation during Sir Thomas Brisbane's Administration, or the present distribution of the duties of the Supreme Court between himself and Mr. Justice Stephen. Two Months have scarcely elapsed, since he proposed to abolish the Office of Master of the Supreme Court, as may be seen on reference to my Despatch; No. 5 of the 7th Ult., altho' this Office is established, both by the New South Wales Act and by the Charter, when he cannot now acknowledge the Appointment of Registrar, made by the Governor under the Authority of his Commission bearing the Great Seal.

It is, I think, quite clear, if the Governor has not the power to appoint a Registrar, that there is no Authority here to abolish the office of Master of the Supreme Court, which has lately been abolished at the instance of the Chief Justice.

Ambitious
objects of
chief justice.

It is evident to me that the object of Mr. Forbes has been for some time past to set the Government aside, and persuade the Public that the Chief Justice is all powerful. I have no doubt that His Majesty's Government will see that such a state of things cannot be suffered to exist, and that the removal of Mr. Forbes, should it not already have taken place, is indispensable at least to the proper conduct of the Government, if not to the due Administration of Justice.

I regret that the Vessel, by which I now write, will sail tomorrow, as I could have wished that my communication on this subject were definitive. But another opportunity will occur by the end of the Month, when I shall not fail to put you in possession of the result of the present proceeding.

I remain, &c.,

RA. DARLING.

* Note 158.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Elisabeth.)

1828.
16 Feb.

My dear Sir,

Sydney, 16th Feby., 1828.

Though quite exhausted with the fatigues of a laborious day, I cannot send off my Despatches without mentioning a circumstance, which has lately been communicated to me, that is, Mr. Forbes having intimated to a person here that the Impeachment, alluding to the case of "Sudds and Thomson," was preparing to be forwarded by the present opportunity; but that I was not to be informed until the vessel had sailed, when a Copy would be sent to me. If this be true, which I can hardly doubt, it shows how the Chief Justice is employed. I merely mention the circumstance that you may be aware of it, though, as I now understand that Dr. Douglas does not proceed to England by the present Ship, I think it likely the *Impeachment* may be kept back, until it can be forwarded under his auspices. It would seem almost impossible that Mr. Forbes could be concerned in this matter, when he spoke of the proceeding in the case of Sudds and Thomson as an error of judgment, as will be seen on reference to the "decision," reported in the Gazette of the 2nd of last Month. I cannot express how much I am mortified at the necessity of thus intruding on your time. But it is of some importance that you should be fully informed.

I remain, &c.,

RA. DARLING.

RIGHT HON. W. HUSKISSON TO GOVERNOR DARLING.

(Despatch No. 16, per ship Phoenix; acknowledged by Governor Darling, 7th August, 1828.)

Sir,

Downing Street, 17 February, 1828.

17 Feb.

I have the Honor to acquaint you, with reference to your Dispatch No. 41 of the 12th March last, relative to the remuneration to be granted to the Master and Owners of the Ship "Sisters" for the recapture of the Ship "Wellington," that, having referred the subject for the consideration of the Lords Commissioners of the Treasury, their Lordships stated it to be their opinion that the sum of £1,800, being the amount awarded in the Colony by the Gentlemen to whom you had referred the question, was an adequate remuneration, and the Colonial Agent was accordingly directed to pay to Mr. J. H. Duke, on behalf of the Owners, the Sum of £1,500, being the amount in question, with the deduction of the Sum of £300, which had been paid by you to the parties in the Colony. A subsequent Communication has, however, been received from Mr. J. H. Duke, a Copy of which is inclosed, in which, in consideration of the severe losses,

Compensation
awarded for
recapture
of brig
Wellington.

1828.
 • 17 Feb.
 Request for
 further
 compensation.

which he states the Owners of the "Sisters" to have sustained in consequence of the service performed by that Vessel, he prays that a further allowance of head or bounty Money may be made, in addition to the sum already awarded; and, as it appears by reference to the report of the Gentlemen, to whom the question of remuneration was referred by you, that the Sum of £1,800 was stated as sufficient to cover the salvage of the Hull and Cargo of the said Brig, and to remunerate the Master, Owners and Crew for their loss of time, and the amount of Cargo which during the space of six months they would have procured, had they remained on the Fishery, it does not seem to have been intended that any further Sum should be paid; and you will accordingly report to me your opinion with regard to the justness of this further claim, which has been set forth by the parties.

I have, &c.,

W. HUSKISSON.

[Enclosure.]

MR. J. H. DUKE TO THE RIGHT HON. W. HUSKISSON.

Sir, 31 Lower East, Smithfield, 23 Jan'y., 1828.

Application for
 payment of
 head money
 on recapture
 of brig
 Wellington.

I beg respectfully to refer you to my letter of the 19th Sept'r. last on the subject of the Capture (by the Captain and Crew of my ship "Sisters") of the Brig "Wellington," piratically seized by Convicts at the Bay of Islands in Jan'y. last.

I have since to acknowledge the receipt of a letter from Mr. Stanley, with an order for the sum of £1,500, which with £300 received by Capt. R. Duke at Sydney appears to be the sum awarded by the Arbitrators at the Colony, but "leaving the final adjustment of our claim to be settled in this country."

I have to solicit the honor of your attention to the following facts, which can be borne out by undeniable testimony and proof. That the fitting out of the "Sisters" for her Whaling Voyage cost me £10,000, and that she was at New Zealand and just commencing her fishing season, which, upon the lowest calculation, would have produced from 60 to 100 Tons of Sperm Oil at £75 p. Ton, when the appearance of the "Wellington" caused the loss of the whole season. The Services rendered by the "Sisters" will occasion her to be out twelve Months longer than she would otherwise have been, thereby entailing upon me a certain loss of Interest in the value of Ship and Cargo, with the cost of victualling 30 Men, and wages to several of them for that period; and in addition thereto a considerable expence was incurred at Sydney. The Insurance has also been vitiated by the deviation, and I have actually paid the sum of £800 for renewing the Insurance at the Royal Exchange Assurance Office, leaving me at the risk of the passage from New Zealand.

The value and importance of the services rendered by my Ship may not unfairly be estimated by the fact of His M. S. "Rainbow" being despatched from Sydney to New Zealand to recover the four missing convicts, and also by the reward of £20 p. head offered for the apprehension of five, which escaped from Goal at Sydney, after they were lodged there from the "Sisters." I, therefore, entreat, Sir, your consideration to my case, as an example and encouragement for similar exertions on like occasions, and pray to be allowed (in addition to the £1,800 received) the privileges of Head Money.

And I hope I shall not be considered intrusive, when I pray that enquiry may be made under your authority whether the Arbitrators, in awarding the sum of £1,800, did not consider that the Captain, Officers and Crew of the "Sisters" were legally or equitably entitled to the further allowance of Head or Bounty Money, over and above the sum awarded, as I have strong reason for believing that such was the fact.

I have, &c.,

J. H. DUKE.

1828.
17 Feb.

Application for
payment of
head money
on recapture
of brig
Wellington.

GOVERNOR DARLING TO VISCOUNT GODERICH.

(Despatch No. 19, per ship Orelia.)

My Lord, Government House, 18th February, 1828.

18 Feb.

It has only just occurred to me that I have omitted to report officially to your Lordship a Measure, which I had been induced to adopt so far back as the Month of July last, being immediately connected with the general transfer of the Expenditure on Account of the Convict Branch of the Service to the Commissariat. The Measure to which I allude is the appropriation of the proceeds of the several Government Establishments, Stock and Agricultural, to the Commissariat, those Establishments being now maintained at the Expense of His Majesty's Government exclusively, and which I presume your Lordship will consider just and reasonable under the existing arrangement.

Appropriation
of proceeds from
government
stock and
agricultural
establishments.

I cannot better explain to your Lordship the view, which I have taken of this matter, than by transmitting a Copy of the Minute, which I issued at the time for the regulation of this measure; and I do myself the honor to forward a Copy accordingly for your Lordship's information.

I further beg leave to enclose a statement of the Grain, Cattle, &c., which have been received by the Commissariat from the several public Establishments for the half year ending the 25 December last, and which have been either applied to the use of the Convict Branch of the Service (the value thereof being specified) or disposed of to meet the Expences of that Branch;

1828.
18 Feb.
Appropriation
of proceeds from
government
stock and
agricultural
establishments.

consequently neither the proceeds of the Sale of Cattle nor of any of the other Items, included in this Statement, will in future appear under the head of "Extraordinary Resources" in the Returns of the Colonial Revenue. It is, however, evident by the Return No. 4, which accompanied my Despatch No. 6, of the 8th January last, that the proceeds of the "Ordinary Revenue" will be sufficient for every temporary purpose, if a fair proportion of the arrears can be collected and payments be enforced in future at the appointed times. I am aware it will be difficult to effect these objects, but I shall endeavour to establish a system of punctuality in this respect, which has hitherto not been attended to.

I have, &c.,

RA. DARLING.

[Enclosures Nos. 1 and 2.]

[*These were*

[1] Minute No. 43 to the colonial secretary, dated 26th July, 1827, *which established regulations for the conduct of the penal and other out-settlements so far as concerned the deputy commissary general.*

[2] Return of colonial produce received by the commissariat department.

Copies of these papers will be found in a volume in series II.]

GOVERNOR DARLING TO RIGHT HON. W. HUSKISSON.

(Despatch No. 20, per ship Orelia.)

20 Feb.
Returns of
military.

Sir,

Government House, 20th February, 1828.

I have the honor to transmit for your information the Monthly Returns for October, November, and December last of the Troops stationed in this Command. I have, &c.,

RA. DARLING.

[Enclosure.]

[Copies of these returns are not available.]

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Orelia.)

Sir,

Government House, 20th February, 1822.

Transmission of
"blue book."

Herewith I have the honor to transmit, for the information of the Right Honble. The Secretary of State, the Blue Book for the Year 1827.

I am sorry that it is not in my power to transmit by this opportunity the Tables, required by the Circular Despatch, dated 11th September, 1826; the information necessary to complete these Tables is on many points more detailed than what is required

for the Blue Book, and great difficulty has been found in collecting the materials necessary to prepare these Tables from the several Departments of the Government. I hope, however, to be able to forward them by the next vessel which sails for England.

I have, &c.,

RA. DARLING.

1828.
20 Feb.

GOVERNOR DARLING TO RIGHT HON. W. HUSKISSON.

(Despatch No. 21, per ship Orelia.)

Sir, Government House, 25th February, 1828.

25 Feb.

I was yesterday honored with the receipt of your Despatches, marked circular No. 1, dated the 3rd of September last, and "Separate" of the same date,* informing me that His Majesty had been pleased to honor you with the Seals of the Colonial and War Department, and instructing me as to the mode of communicating with you according to the nature of the subjects, on which I may have occasion to address you.

Despatches
acknowledged.

I beg to assure you that I shall on all occasions make a point of conforming to such Orders, as you may be pleased to honor me with for the guidance of my public conduct. I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO RIGHT HON. W. HUSKISSON.

(Despatch No. 22, per ship Orelia.)

Sir, Government House, 25th February, 1828.

I have the honor to acknowledge the receipt of Viscount Goderich's Despatch, No. 35† of last year, on the subject of the Employment of Lieut. Col. Morisset; and I beg to state, Sir, for your information, in reference to my Despatch, No. 108, dated the 25th October, 1827, that Colonel Morisset continues in the Situation of Principal Superintendent of Police, for which Office he appears very well qualified, and in which I propose he should remain, until circumstances may render it expedient to make another arrangement.

Employment of
J. T. Morisset.

I have stated, in my Despatch above referred to, the Expenses attendant on his employment as Principal Superintendent of Police, and I request authority for their being incurred.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO RIGHT HON. W. HUSKISSON.

(Despatch No. 23, per ship Orelia; acknowledged by Sir George Murray, 15th November, 1828.)

Sir, Government House, 25th February, 1828.

I regret the necessity of forwarding for your information the Extracts of two Reports, which I received on the 21st inst.

* Note 186. † Note 187.

1828.
25 Feb.

Reports from
commandants at
Raffles bay
and Melville
island.

from Captain Smyth, 39 Regt., Commandant at Port Raffles, and Brevet Major Campbell of the 57th, the Commandant at Melville Island.

The former conveys an account of the Death of the Medical Officer, Dr. Wood, and the sickly state of the Settlement. It appears, by the enclosed Return, that, out of 76 Persons, 49 were on the sick list, suffering severely from Scurvy, 14 of whom were afterwards removed to Melville Island, and 5 of these have now arrived here.

In addition to the unfortunate state of the Settlement from sickness, it will be seen that the Natives have been very troublesome.

Murders by
natives.

The Report of Major Campbell contains an account of the melancholy fate of the Surgeon at Melville Island, Mr. Gold, and of Mr. Green, a Clerk in the Commissariat, who, during their Evening's Walk, having gone only a short distance from the Settlement, were Murdered by the Natives on the 2nd of November last.

It will be seen by these Reports that both Settlements have been without a Surgeon since the Month of October.

Stores sent to
Raffles bay.

With respect to supplies and "Medieal Comforts," the Settlement at Port Raffles was amply provided in its formation. A list is enclosed of the Stores in possession at the end of July last, since which period two Vessels have been detached with Stock and other necessaries. It will, therefore, be seen that, in addition to the Brig Mary Elizabeth being exclusively employed in attending that Settlement, every possible attention has been paid to prevent its suffering inconvenience. That it has not stood in need of supplies is proved by the circumstance of the Mary Elizabeth not having been detached from the Settlement, until the Scurvy broke out and the Death of Dr. Wood induced the Commandant to send to Melville Island for Medieal assistance.

Relief
measures
to be taken.

It will be satisfactory to you to be informed that every possible step is taking to supply what is required for these Settlements. Two Surgeons will proceed immediately, taking a supply of Antiscorbutic and other appropriate Medicines and necessaries. I regret that the supply of Lime Juice in Store is not more considerable, consisting merely of the remains of that Article, delivered over by the Surgeons of the Convict Ships; and I beg to point out the expediency of an ample supply both of Lime Juice and preserved Meats being forwarded by the first opportunity, being essential at these remote Settlements, where there is so little opportunity of obtaining fresh Provisions. It will be seen by Major Campbell's Report that the vegetable seeds, which were

forwarded from hence, have entirely failed; and, though Captain Smyth was supplied with seeds of every description, he does not appear to have been more fortunate.

1828.
25 Feb.

Relief
measures
to be taken.

My intention is to despatch the Brig Governor Philip, which is a very fine vessel, with one Surgeon and part of the supplies required for these Settlements, and to avail myself of the opportunity afforded by the Philip Dundas, private Trader, to forward the second Surgeon and the remainder of the Supplies, so as to prevent any disappointment, which would be occasioned, should one vessel only be employed and fail in its object, a precaution which is the more necessary as the Passage through Torres Straits is attended with much difficulty, and a vessel proceeding by Bass's Straits at this season could not reach the North Western Coast before the North Eastern Monsoon had set in, which would retard if not prevent her reaching her destination.

Having, Sir, put you in possession of the fullest information in my power with respect to the circumstances and local situation of Melville Island and Port Raffles,* I shall leave you to determine as to the expediency of retaining or abandoning these Settlements. It may be proper to state that, though so long established, no vessel appears to have touched at Melville Island, either for the purposes of Trade or otherwise; nor have the Malays visited that Settlement. Captain Smyth writes, four months after the establishment of the Settlement at Port Raffles, that the Malays had not been either at Port Raffles or Port Essington; and I may add the Merchants of this place do not appear ever to have had any intention of opening a Trade on that part of the coast.

Expediency
of retaining
settlements.

It will be seen by the accompanying reports of Major Campbell and Captain Smyth, who visited Port Essington at different times, that they concur in the Superiority of its Situation for a Settlement. It is stated that three Vessels, His Majesty's Ship Rainbow, and the Brigs Ann and the Mary Elizabeth, had failed in their endeavours to find Fort Wellington. I shall not hesitate to desire Captain Smyth, should circumstances permit, though it is hardly to be expected at present, to look out for an eligible site at Port Essington, and to remove the Settlement to that place, as soon as his people are equal to the undertaking. It is stated, in Mr. Hay's letter to Mr. Barrow, a Copy of which was transmitted to me with Earl Bathurst's Despatch, No. 26 of the 7th of April, 1826, that the Establishment at Croker's Island was intended to be temporary, "until a fit spot may be selected for the formation of a permanent Establishment in that Quarter."

Port Essington
proposed for
settlement.

* Note 123.

1828.
25 Feb.

Adverse
reports on
Melville Island
and Raffles bay.

In submitting for your consideration whether, in the event of Port Essington being found to hold out sufficient inducement to establish a Settlement there, it might not be expedient to abandon Melville Island, I beg to refer you to Major Campbell's report, which accompanied my Despatch of the 13th of October last, No. 106, it appearing by that Report that, independent of the hostility of the Natives, a more unfavourable spot for the purpose intended could not have been selected; and I am sorry to perceive by the Reports now transmitted that Port Raffles does not appear to have been more judiciously chosen.

Object of
settlements in
N. Australia.

I hope I shall be pardoned for observing, if the project of establishing a Settlement on the Northern Coast originated with a man of the name of Barnes, that it might be well to reconsider the matter before His Majesty's Government determines to continue Establishments which hitherto have produced only disappointment and Expense, without holding out any prospect of a better result.

I have stated on a former occasion that the remote Settlements may be desirable as a means of keeping the French from establishing themselves in New Holland. But Mr. Barnes' object seems to be altogether speculative. He was here some time since, and tendered his services; but I had heard of his proceedings at Melville Island and of his visit to Madagasear. In short, I believe him to be an unprincipled adventurer, totally unworthy of Notice.

Difficulty of
communication
with remote
settlements.

In requesting your attention, Sir, to this subject, I beg to refer to my letter of the 14th of May last to Mr. Hay, pointing out the great difficulty and tediousness of the communication, even under the most favorable circumstances, with the more remote Settlements. The Expense is besides very considerable. There are now Four Brigs and Three Schooners necessarily employed by the local Government for this purpose; and it will be absolutely necessary to strengthen the Detachments at both places, as, in the event of any more extensive sickness than that which has unfortunately prevailed at Port Raffles, the whole Settlement would be exposed to be Massacred by the Natives.

Danger
expected from
natives.

Though the effect or apprehension of Fire Arms occasions these people to disperse at the Moment, it will be observed that they are always at hand to attack Individuals, keeping as appears constantly in the neighbourhood of the Settlements.

Relief of
J. Campbell.

From the desponding tone of Major Campbell's letter, whose Health appears to have suffered, and from the anxiety he has so strongly expressed in his private communications to be relieved, I have considered it advisable to send Captain Hartly of the 57th to take charge of the Settlement, who will be accompanied

by a Subaltern, L't Bates' state of Health not permitting of his continuing at Melville Island. It is, however, to be observed that neither the Troops nor Convicts were suffering from Sickness at that Settlement.

I have, &c.,

RA. DARLING.

[Enclosures.]

[These were

No. 1. Extracts from Letter from Captain Smyth, dated at Fort Wellington, Raffles Bay, 30th October, 1827. Enclosures transmitted.

No. 2. Extracts from letter from Major Campbell, dated at Melville Island, 9th November, 1827.

No. 3. Return of population at the settlement at Fort Wellington, Raffles Bay, on the 29th October, 1827.

No. 4. Account of provisions at the settlement of Fort Wellington on the 31st July, 1827.

Copies of these papers will be found in a volume in series II.]

GOVERNOR DARLING TO UNDER SECRETARY HAY,

(Despatch per ship Orelia.)

Sir,

Government House, 25th February, 1828.

I do myself the honor to acquaint you, for the information of the Right Honble. The Secretary of State for the Colonies, in reference to Mr. Horton's letter of the 20th of October last, that the Statement of Mr. Brown, on the part of Australian Company, is so far incorrect, as that the removal of the residence of the Governor to Parramatta last Year was merely temporary and continued only during the period the Government House in Sydney was under repair. I am, however, not without hope that I may ere long be enabled to propose an arrangement, which will provide for the accommodation of some Mercantile Establishments in a convenient situation, when the claims of the Australian Company may be considered. I have, &c.,

Request of
Australian
company for
warehouse site.

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.

(Despatch per ship Orelia.)

My dear Sir,

Sydney, 25th February, 1828.

I have been favored with your letters of the 13th and 20th of August with their Enclosures respecting Staff Surgeon McLeod. Despatches acknowledged.

I cannot better explain the view, I have taken of Lient. Stirling's Conduct in this matter, than by enclosing the copy of a Letter, which I have felt it my duty to write to the Adjutant

1828.
25 Feb.

Criticism of
conduct of
R. Stirling.

General, in order to its being brought under the consideration of His Grace The Commander in Chief. It appears to me, there must be an end to that feeling of respect, which is due to high Public Station, if a Subaltern in the Service be permitted to interfere, as Lieut. Stirling has done, in a matter with which he could have had no possible concern. Sir Thomas Brisbane was I suppose capable of asserting his own rights, and I am sure would not have put forward Lieutenant Stirling as his champion in the manner, in which that Gentleman has it appears to me very indecorously intruded himself.

It may not be irrelevant to notice here that I have received two Letters from Sir Thomas Brisbane by Dr. McLeod, written in his usual friendly style, and not even adverting to the circumstance of my having objected to his coming out.

Reason for
objection to
appointment of
D. Macleod.

I shall now state, in as few words as I can, the circumstance, alluded to in my private Letter of the 7th of February last year; and you will judge whether the grounds, on which the wish was expressed respecting Dr. McLeod, were sufficient to justify it, or whether I am to be made accountable to Lieutenant Stirling for the exercise of my public duty in a matter, in which I considered the good Government of the Colony to be concerned.

Immoral
conduct of
D. Macleod.

I do not know whether you are aware that Dr. McLeod, previous to his return to England, was Police Magistrate at Parramatta. It was his duty, at that time, to visit the Female Factory; and, though a Magistrate of the Territory charged with the Superintendence of an Establishment of that peculiar character, I am informed his being accompanied on these occasions by a woman of bad character was not unusual; it was publicly known that he cohabited with this woman, who was married at the time. If the fact of his intimacy with her required any confirmation, I should be fully justified in stating that, being unwilling to lose the opportunity of renewing their acquaintance, she went off to visit the Doctor, soon after the ship arrived. Her husband had died during the Doctor's absence.

I really state these facts with infinite reluctance, as a sense of what I owe to myself alone induced me to refer to a matter, which I should otherwise never have thought of bringing forward, nor have I any desire of attaching an unnecessary importance to it.

Consequent
objections.

The situation of Police Magistrate had been reserved for Dr. McLeod, and, under the circumstances now stated, I considered his resuming it highly objectionable; and indeed it appeared to me better that he should not return to the Colony, and under this impression I wrote to you. I had no desire to injure Dr. McLeod. I could have none. He was the Protégée of my

friend, Sir Thomas Brisbane, and I must have felt a wish to serve him. He is no longer a Magistrate, nor has he any concern with the Factory; and I beg it may be understood that I have no personal objection to him.

1828.
25 Feb.

I may be excused for observing that I do not quite comprehend Sir James McGregor's Letter to Sir Herbert Taylor, a Copy of which accompanied yours of the 20th of August. He says, "General Darling, having in a public manner made the same objection to his (Dr. McLeod's) return to New South Wales, that he had made in a Letter, addressed to myself *several months back*, I was induced," etc. I had not objected in a public manner; my letter to you was private and was communicated to him as such, as was my letter to Sir James McGregor himself, which I am led to think was received before Dr. McLeod was appointed. He might, therefore, have prevented the cause of Dr. McLeod's ruin by not nominating him, which he appears afterwards to have been so anxious to avert. Again he says, "The substance of my communication to Mr. McLeod was that *another* remonstrance had arrived from Genl. Darling to Mr. Hay, similar to the one which had reached me several months back," etc. He proceeds, "*The subject of that first communication I thought it but fair to give to Mr. McLeod,*" as he did afterwards the subject of the second communication. I need only add, if this is Sir James McGregor's opinion, I am at a loss to understand what meaning he attaches to a private and confidential communication.

Previous
protests against
employment of
D. Macleod.

I remain, &c.,

RA. DARLING.

GOVERNOR DARLING TO ADJUTANT-GENERAL OF THE FORCES.

(Despatch per ship Orella.)

Sir,

Sydney, 25th February, 1828.

I feel myself called on, in support of the Discipline of the Service and the important Stations which I have the honor to fill, both in a civil and military capacity, to request the attention of His Grace the Commander in Chief to the conduct of Lieut. Stirling of the Buffs.

Conduct of
R. Stirling
reported to
war office.

Feeling it my duty, as Governor of this Colony, from a circumstance which had come to my knowledge, to point out the inexpediency of Dr. McLeod, the present Staff Surgeon, returning hither, I wrote to Mr. Hay, the Under Secretary of State, confidentially, and endeavoured to express my wish in a manner as little injurious to Dr. McLeod as possible, stating generally that from his habits Dr. McLeod's return to the Colony did not appear desirable.

1824.
25 Feb.

Conduct of
R. Stirling
reported to
war office.

It appears that, in order to give effect to my wishes, Mr. Hay communicated my Letter to Sir Herbert Taylor, as Sir Herbert Taylor did to Sir James McGregor. The fact at length became known to Lieutenant Stirling, formerly Aid de Camp to Sir Thomas Brisbane, when Governor of New South Wales. Lt. Stirling wrote in consequence to Mr. Hay, a Copy of which Letter and of the answer, I do myself the honor to enclose for His Grace's information, very improperly as I conceive, questioning the arrangements which I had felt it necessary to recommend as Governor, and highly unbecoming his Situation as a Subaltern in the Service, in which I have the honor to hold His Majesty's Commission as Lieutenant General.

It will be seen by Lieutenant Stirling's letter that he steps forward as a Volunteer, in Sir Thomas Brisbane's name, without any authority that appears for so doing, to be furnished with a copy of my Letter to the Under Secretary of State, stating that Sir Thomas Brisbane would consider any objection to Dr. Macleod's return to the Colony "as a personal affront to himself," and that "he will feel desirous to meet General Darling at the Horse Guards upon equal terms."

I shall not permit myself to comment upon the conduct or the tone of this gratuitous Ambassador, feeling satisfied that his ignorance of his duty as a Subaltern in the Army will not be received as an excuse for his unauthorized interference in a matter, in which he ought not to have presumed to meddle.

I do myself the honor further to enclose for His Grace's perusal Copies of two Letters from Mr. Hay and Sir Herbert Taylor on the subject.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

LIEUTENANT STIRLING TO UNDER SECRETARY HAY.

Sir,

August, 1827.

R. Stirling's
letter of protest.

Dr. Macleod (proceeding to New South Wales as the Staff Surgeon to the Forces) has this morning been informed by Sir James Macgregor that General Darling has applied to the Colonial Office to prevent his (Dr. Macleod) being allowed to return to the Colony. Should this be the case, it will involve the most unpleasant consequences, as Sir Thomas Brisbane will consider it as a personal affront to himself under the peculiar circumstances of the case; as such I have taken the liberty of waiting upon you to request you will permit me to see General Darling's letter, which I should conceive had been misapprehended by Sir James Macgregor; if otherwise, and a regular charge be brought against Dr. Macleod, I beg, in Sir Thomas'

name, that he may be furnished with a copy, as he will feel desirous to meet General Darling at the Horse Guards on equal terms.

I remain, &c.,

R. STIRLING.

[Enclosures Nos. 2 and 3.]

UNDER SECRETARY HAY TO LIEUTENANT STIRLING, 13th August, 1827.

UNDER SECRETARY HAY TO SIR HERBERT TAYLOR, 10th August, 1827.

[Copies of these two letters are not available.]

[Enclosure No. 4.]

SIR HERBERT TAYLOR TO UNDER SECRETARY HAY.

My dear Hay,

15 Windsor, 12 August, 1827.

I have just received Your Letter of the 10th, respecting Sir James McGregor's Communication to Dr. Macleod; and I will lose no time in ascertaining from the former what was the nature of his Communication to the latter. I returned Darling's Letter to you Yesterday, and, as far as I recollect it, Sir Thomas Brisbane was not named in it, nor was there anything which pointed out the necessity of Reserve, but his Desire that Doctor Macleod might not be sent back to New South Wales; and surely He might express His Wish without giving or intending Offence to Sir Thomas Brisbane, or any third Person. His Request would at once have been complied with, if Dr. Macleod had not taken His Passage, and otherwise put Himself to great Inconvenience and Expence. I was perhaps wrong in Communicating the letter to Sir J. M.; but I did so privately, and it was difficult for Me otherwise to bring the question to Issue; but I could not have concluded that He would show it to Dr. Macleod, or have said a word to him on the Subject, unless He meant to Stop Him. Possibly Sir James McGregor may have alluded to other Matters (of which I was ignorant) in His Communication to Dr. Macleod, as the latter may have done so to Lieut. Stirling; but there was nothing in Darling's Letter to warrant such Interpretation.

Account of negotiations by Sir H. Taylor.

I must observe that Lieut. Stirling's appears to Me a very extraordinary Letter, and that I cannot conceive upon what plea, Official or private, He or any Man has a right to interfere with the Objections, which a Responsible Governor in Com'd of the Forces may make to the Services, under His Order, of any particular Individual, or to question His Motives for giving a preference to another.

1828.
25 Feb.

If this sort of Interference were admitted, the Executive Officer would become responsible to every Man, who chose to put himself forward, instead of being so to those under whose Authority He acts. I return Lieut. Stirling's Letter, and

Ever am, &c.,

H. TAYLOR.

GOVERNOR DARLING TO RIGHT HON. W. HUSKISSON.

(Despatch No. 24, per ship Orelia.)

26 Feb.

Sir,

Government House, 26th February, 1828.

Arrival of
Judge Dowling.

I have the honor to report for your information that Mr. Dowling,* Assistant Judge of the Supreme Court, has arrived, and was sworn into Office by me on the 25th instant.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO RIGHT HON. W. HUSKISSON.

(Despatch marked "Separate," per ship Orelia; acknowledged by Sir George Murray, 30th August, 1828.)

Sir,

Sydney, 26th February, 1828.

Conduct of
F. Forbes on
appointment of
J. Stephen, jr.

I feel it my duty to bring under your notice the conduct of Chief Justice Forbes, on the occasion of the appointment of Mr. John Stephen, Junior, to succeed the late Mr. Mills as Registrar of the Supreme Court, as I reported in my Despatch, No. 17, dated the 15th instant.

In order to place the subject before you in a clear and satisfactory manner, it will be necessary to detail certain previous occurrences, as they will explain the grounds of my proceedings, which Mr. Forbes would be thought to consider as interfering with his *judicial* conduct.

Reorganisation
of establishment
of supreme
court.

Mr. Forbes addressed a detailed statement to me in the month of December last, of which I do myself the honor to enclose a Copy, on the subject of the duties of the Ministerial Officers of the Supreme Court. In consequence of the suggestions in that Statement, the Office of Master was discontinued on Mr. Carter's receiving the appointment of Sheriff, and the duties, as already reported in my Despatch No. 5, dated the 7th of January last, were transferred to the Clerks of the Supreme Court.

Office of
registrar.

In the 5th page of the above Enclosure, Mr. Forbes, in speaking of the *Registrar* of the Supreme Court, says, "I am of opinion that this Office may be conveniently retained, *subject to certain modifications of its duties.*" Therefore, on the death of the late Registrar, I wrote to Mr. Forbes, as appears by the

accompanying Copy of my Letter, as I had previously done on the occasion of the office of Master becoming vacant, as will be seen on reference to my despatch No. 5 of the present year, to request he would state whether he had any more convenient arrangement to propose for the performance of the duties than that which existed.

In reply, as will be seen by Enclosure No. 3, He requested to be informed whether it was my intention that he should recommend an alteration with respect to the Office itself, or merely with respect to the detail of its duties.

I stated in answer that the question had reference to the *duties* to be performed by Mr. Stephen, as will be seen by Enclosure No. 4; When Mr. Forbes wrote in reply that he had no suggestion to offer as to Mr. Stephen's duties, the proceedings of all the Ministerial Offices being placed in the Chief Justice.

In my letter of the 16th, I explained my object more fully, adding that I was desirous of conforming to the practice observed by the Secretary of State in such cases, as will be seen on reference to the Despatch notifying the Appointment of the late Mr. Mills as Registrar, an exact Copy of which was furnished to Mr. Stephen for his guidance.

I heard, in the course of that day, the 16th instant, that, Mr. Stephen having presented his Patent of Appointment to the Court with a view to his being sworn in, the Chief Justice had demurred to admit him, in order, as he stated, that he might have time to consider the legality of the appointment.

It will be observed by the enclosures, though we had been in correspondence on the subject of Mr. Stephen's appointment, and Mr. Forbes had written me two letters, that he had expressed no doubt as to its legality, nor did he make any objection on that ground, until Mr. Stephen presented himself in Court to be sworn in.

As the circumstance of Mr. Forbes's refusal to admit Mr. Stephen had not come before me in any official form, I thought it best to await the result of his proceedings in Court, when the Colonial Secretary, on the 17th being Sunday, communicated to me a Letter he had received from Mr. Forbes, in answer to one he had addressed to him officially notifying Mr. Stephen's appointment.

I do myself the honor, Sir, to enclose for your consideration a Copy of that Letter, on the nature of which it must be unnecessary to make any comment. If any doubt could exist as to the object of Mr. Forbes's proceedings in Court, it would at once be removed on the perusal of that Letter, which speaks of the Patent, issued in the King's Name, as "professing" to

1828.
26 Feb.

Correspondence
with F. Forbes
re office of
registrar.

Refusal of
F. Forbes to
admit
J. Stephen, jr.

1828.
26 Feb.

Oaths taken by
J. Stephen, jr.

Responsibility
for possible
irregularities.

make an appointment, the legality of which he the Chief Justice thought proper to doubt. Mr. Forbes's object being answered, it was unnecessary any longer to hesitate as to Mr. Stephen's admission, who was then sworn in as Registrar, a sufficient proof that he considered the appointment legal, as it may be presumed he would not have allowed any feeling of delicacy to have interfered with the faithful discharge of his public duties.

I felt it necessary, in consequence of the style of Mr. Forbes's Letter to the Colonial Secretary, to write to him on the subject, and to state the view I had taken of the case; and I request, Sir, your particular attention to the enclosed Copy of that Letter, as my object was to place the whole matter before Mr. Forbes, to shew him, if there was any irregularity in the reference which had been made to him, the irregularity was occasioned by his own suggestions, and the course which had been adopted when the Office of Master became vacant.

Mr. Forbes can hardly say that he considered there was any objection to his *propositions* and *suggestions* being acted on, though he had requested that the Letter containing them might be forwarded to the Secretary of State, or why did he not point out the illegality or irregularity of their being adopted in the case of the office of Master becoming vacant, when I wrote to him on that occasion. He on the contrary immediately submitted an arrangement for the performance of the Duties, as communicated in my Dispatch No. 5 of the present year, and never intimated in the most remote manner that any objection existed.

Power of
governor to
appoint law
officers.

As to my authority to appoint the Ministerial Officers of the Supreme Court, I humbly conceive that my Commission* as Governor under the Great Seal, which empowers me in distinct and express terms to *constitute and appoint all necessary Officers and Ministers in this Territory and its Dependencies for the better administration of Justice and putting the Law into execution*, is of itself sufficient though it may not be so established either by Law or Usage. That it has been the practice is proved by the appointment of Mr. Gurner as Registrar, which appointment was made by Sir Thomas Brisbane at the instance of Mr. Forbes.

Interference
by governor in
law courts
alleged.

I received from Mr. Forbes a reply to my Letter of the 18th February, in which, after endeavouring to excuse himself from any intentional disrespect to the Government, he concludes, as will be seen on reference to the last paragraph of his Letter, Enclosure No. 10, by giving a character to the proceeding in question, which in no respect belongs to it; and I beg your particular attention to this point, as it is not the first attempt

* Note 185.

which Mr. Forbes has made to induce a belief that I have interfered with the Judicial proceedings. Though the matter in question is one of mere *Official arrangement*, it will be observed that he speaks of being *bound by the most solemn obligations of his office and his Oath*; and that *he must discharge his duty uncontrolled by any authority but the Law*; and concludes *by excusing himself from accounting to me for his Judicial conduct*.

1828.
26 Feb.

Interference
by governor in
law courts
alleged.

In order to prevent his conveying an erroneous impression in this respect in the Statement, which he proposes to transmit to you, as well as to be saved the trouble myself of replying to any matters not legitimately connected with the case, I felt it necessary to write to Mr. Forbes to this effect; and I do myself the honor to enclose for your information a Copy of the Letter, which I addressed to him, which I trust will render it sufficiently clear that I have not interfered with any *Judicial* proceedings in this case.

As it is understood that the Ship, now under despatch, the "Orelia," will certainly sail on Sunday, I have thought it better to close my Despatch without further delay, as Mr. Forbes's statement may not be sent in in time to enable me to reply to it.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

[*This was a copy of the letter from chief justice Forbes, dated 15th December, 1827; see page 680.*]

[Enclosure No. 2.]

GOVERNOR DARLING TO CHIEF JUSTICE FORBES.

Sir, Government House, 14th February, 1828.

I have the honor to acquaint you that I have nominated Mr. John Stephen, Junr., to succeed the late Mr. Mills; and I request to be informed, previously to carrying the Appointment into effect, whether you would recommend any other arrangement as more convenient for the performance of the Duties of Registrar of the Supreme Court than that which has hitherto existed.

Nomination of
J. Stephen, jr.,
as registrar.

I have, &c.,

RA. DARLING.

[Enclosure No. 3.]

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

Sir, Sydney, New South Wales, 15th February, 1828.

I was only honoured this morning with your Excellency's Letter of yesterday's date, acquainting me that you had nominated Mr. John Stephen, Junior, to succeed Mr. Mills, and requesting to be informed whether I would recommend any other

Letter
acknowledged.

1828.
26 Feb.

Interpretation
of letter.

arrangement for the performance of the Duties of Registrar of the Supreme Court than that which had hitherto existed. As a doubt rests upon my mind whether Your Excellency has referred it to me to say, whether I would recommend any alteration with respect to the Office itself, or merely with respect to the detail of its duties, I have to request that your Excellency will have the goodness to explain, upon which of these two points my advice has been required.

I have, &c.,

FRANCIS FORBES.

[Enclosure No. 4.]

GOVERNOR DARLING TO CHIEF JUSTICE FORBES.

Sir,

Government House, 15th February, 1828.

I have this moment received your letter of this date, acknowledging mine of yesterday, relative to the Appointment of Mr. John Stephen, Junr., to succeed the late Mr. Mills. I beg to state in reply that, it being my intention in notifying Mr. Stephen's Appointment to inform him of the nature of the duties he would have to perform, it occurred to me that you might have some suggestions to offer in this respect.

I have, &c.,

RA. DARLING.

[Enclosure No. 5.]

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

Sir,

Supreme Court, 15th February, 1828.

I am just honored with your Excellency's reply to my Letter of this day. Your Excellency having concluded upon the appointment of Mr. Stephen as the Successor of Mr. Mills in the Office of Registrar of the Supreme Court, I have no suggestions to offer as to his duties. The proceedings of all the Ministerial Officers of the Court are placed by Act of Parliament* under the regulation of the Chief Justice; and I am sure it was from inadvertency that your Excellency proposed to me to recommend to your Excellency any arrangements that I might deem necessary to make with respect to the duties of the Registrar.

To Mr. John Stephen individually, I have not the least objection; but I feel myself called upon to state candidly to your Excellency that I consider the appointment of an Officer of the Court, so immediately about the Person and necessarily entrusted with so much of the confidence of the Chief Justice as the Registrar, without any previous communication with me, a slight upon the high office, which His Majesty has entrusted to

Request for
statement of
duties of
registrar.

Duties of
registrar to be
regulated by
chief justice.

Want of
courtesy alleged
by T. Forbes.

* Marginal note.—4th Geo. 4, chap. 96. Order in Council dated 19th October, 1824.

me, and the more especially after the communications, which I have had the honor to address to your Excellency upon the subject of the Officers of the Supreme Court.

As this is a second instance, in which I have experienced a similar want of courtesy at your Excellency's hands, I hope I shall be excused by your Excellency, if, from a sense of duty, I appeal to the Secretary of State.

I have, &c.,

FRANCIS FORBES, Chief Justice.

1828.
26 Feb.

Want of
courtesy alleged
by F. Forbes.

[Enclosure No. 6.]

GOVERNOR DARLING TO CHIEF JUSTICE FORBES.

Sir, Government House, 16th February, 1828.

I have the honor to acknowledge the receipt of your Letter of yesterday, in which you inform me that the proceedings of all the ministerial Officers of the Supreme Court are placed by Act of Parliament under the regulation of the Chief Justice. I am led to suppose from this that I may not have expressed myself with sufficient clearness, as the object of my communication was that I might be enabled to point out to Mr. Stephen, conformably to the practice observed by the Secretary of State in such cases, the nature of the duties generally which would devolve on him as Registrar. As you state in your Letter that you have no suggestions to offer on this subject, I have adhered to the Instructions which were addressed by the King's Command to my Predecessor on the appointment of the late Registrar.

Instructions to
G. G. Mills
given to
J. Stephen, jr.

I am sure, Sir, you will agree with me that it would be unavailing to enter at present into any explanation with respect to the other point adverted to in your letter. I have, therefore, only to express my readiness to forward any representations, which you may think proper to make, conformably to the regulations which have been established by the Secretary of State on that Head.

I have, &c.,

RA. DARLING.

[Enclosure No. 7.]

[*This was a copy of Earl Bathurst's despatch, numbered 1 and dated 5th January, 1824; see page 192, volume XI.*]

[Enclosure No. 8.]

CHIEF JUSTICE FORBES TO COLONIAL SECRETARY MACLEAY.

Sir, Sydney, 16th February, 1828.

Mr. John Stephen, Junr., exhibited a Patent in the Supreme Court this morning, professing to appoint him Registrar of the Supreme Court. As the legality of his appointment is *sub judice*, I must decline any further answer to your Letter,

Patent exhibited
in court by
J. Stephen, jr.

1828.
26 Feb.

communicating Mr. Stephen's Appointment, which I have only just received, than that of simply acknowledging the receipt of it.

I have, &c.,

FRANCIS FORBES, C.J.

[Enclosure No. 9.]

GOVERNOR DARLING TO CHIEF JUSTICE FORBES.

Sir, Government House, 18th February, 1828.

Summary of
correspondence
with chief
justice.

The Colonial Secretary has just now submitted to me your Letter of Saturday last, the 16th inst., stating that Mr. John Stephen, Junr., had exhibited a Patent in the Supreme Court that morning, "professing" to appoint him Registrar, and that, as the "legality" of his appointment is *sub judice*, you must decline any further answer to the Letter, which you had received from the Secretary notifying Mr. Stephen's Appointment.

Extraordinary as this proceeding on your part appears to me, I would fain abstain from commenting on it, in the hope that, in the time which has elapsed, you may have taken a more correct view of the case and be induced to act more consistently with your duty than when you wrote last.

When I had the honor of writing to you on Saturday, in answer to your Letter of the preceding day, I was so much occupied, being engaged in preparing my Despatches for the "Elizabeth," which sailed yesterday morning, that it was not in my power at the moment to look so fully into the subject under discussion, as it has now been.

I must, therefore, request your attention to the following facts, and shall leave you to reflect on the case.

In your second Letter to me of Saturday, you observe that "your Excellency having concluded upon the appointment of Mr. Stephen as the Successor of Mr. Mills in the Office of Registrar of the Supreme Court, I have no suggestions to offer as to his duties. The proceedings of all the ministerial officers of the Court are placed by Act of Parliament under the regulation of the Chief Justice, and I am sure it was from inadvertency that your Excellency proposed to me to recommend to your Excellency any arrangement that I might deem necessary to make with respect to the duties of the Registrar."

I am not insensible to your courtesy in supposing that the reference, I had made respecting Mr. Stephen's duties as Registrar, proceeded from inadvertency, tho' I think it appears, by your letter of the 15th December last, that the indulgence you were disposed to shew me was unnecessary; at least, if I acted erroneously in referring to you on the above point, that I was led into the error by that letter; As, in speaking of the Office of

Registrar, you state, "I am of opinion that this Office may be conveniently retained, *subject to certain modifications of its duties.*" And having subsequently taken a "short review of the present state of the ministerial officers of the Supreme Court," you are pleased to add in that Letter, "In *proposing* a remedy, I would beg leave to suggest the entire remodelling of the Offices themselves." Again, "I venture to *propose* an entire omission of the titles, used in the Charter," etc.

1828.
26 Feb.

Summary of
correspondence
with chief
justice.

Thus, according to your Letter of the 15th inst., it would appear that the Government has no power to interfere with respect to the duties of the Registrar of the Supreme Court, while, in your Letter of the 15th December last, you "suggest" to the Governor the "entire remodelling of the Offices" (which I presume includes the Registrar's) of the Supreme Court, and "propose the entire omission of the Titles, used in the Charter."

In disputing the legality of the Appointment of Registrar under the Charter, may I be permitted to ask on what ground you are induced to consider the arrangement for the performance of the duties of Master of the Supreme Court, as suggested in your Letter to me of the 15th December, to be legal?

Legality of
arrangement
re duties of
registrar.

I find, on referring to the 9th Section of the Charter, it is ordained and directed *that all persons, who shall and may be appointed to any Offices in the said Court, whereof the duties shall correspond to those of Master, shall be so appointed by His Majesty.* The Chief Justice being empowered only to appoint to such "other Office" as is not therein specially named (these Officers being those of Master, Registrar, Prothonotary or Keeper of Records), or the duties of which do not correspond with those Offices last mentioned.

I take this opportunity of referring you to the Sydney Gazette of the 20th May, 1824, in which the appointment of Mr. John Gurner as Registrar is notified, and which appointment appears to have been made by the Governor, at the time on the Opening of the Supreme Court under the present Charter, which constitutes you Chief Justice, when the same illegality must have existed in the Appointment of Mr. Gurner, as you *now* presume exists in that of Mr. Stephen, no Warrant under the Royal Sign Manual appearing to have been received in either case for the appointments alluded to.

Having appointed Mr. Stephen Registrar of the Supreme Court, by the Authority vested in me by my commission as Governor under the Great Seal of England, which empowers me *to constitute and appoint all necessary Officers and Ministers in this Territory and its Dependencies for the better Administration of Justice and putting the Law into Execution*, I have now, Sir,

1828.
26 Feb.

Request for re-
consideration.

only to express my hope that you will consider the Patent "professing," as stated in your Letter to the Colonial Secretary, to appoint Mr. Stephen Registrar of the Supreme Court, the legality of which Patent you were induced to doubt as a legal and sufficient Instrument; and that you will see the propriety of taking the necessary steps to remove in an equally public manner the indignity offered to His Majesty's Commission by your proceeding of Saturday last. I have, &c.,

RA. DARLING.

[Enclosure No. 10.]

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

Sir,

Sydney, 18th February, 1828.

Letter
acknowledged.

I lose not one moment in doing myself the honor to acknowledge the receipt of your Excellency's Letter of this day's date, because I am painfully anxious to relieve myself from the charge of offering any intentional indignity to His Majesty's Commission; that Commission, I presume, Sir, to mean the letters patent appointing Mr. John Stephen, Junr., to the Office of Registrar of the Supreme Court; and I beg your Excellency's attention to the following facts.

Consideration
of patent for
J. Stephen, jr.,
by court.

On Saturday morning, Mr. Stephen exhibited his Patent in the Supreme Court. As the Instrument was not according to the form, directed by the Charter of Justice, and as it respected an Officer of the Supreme Court, the Court took time, before it admitted Mr. Stephen by any Act of its own, to look into the Appointment and satisfy itself that it was legal. After the Court had been adjourned, and while I was in the Office, about three o'clock a messenger came with a letter addressed by the Colonial Secretary to me, which upon opening I found to contain a notification of Mr. Stephen's Appointment as Registrar. I had reason to believe, from the time and place of this Letter being put into my hands, that it was written with some knowledge of the proceedings of the Court, which had taken place that day, and with some reference to those proceedings, as it seemed otherwise extraordinary that the Colonial Secretary should inform me by letter in the afternoon, of what had been in the most formal manner laid before me in the morning in the Supreme Court. Under this belief, I sat down to acknowledge the receipt of the Colonial Secretary's Letter, and at the same time to guard myself against any admission of the legal effect of the Instrument then under the judicial cognizance of the Court. If, Sir, in the manner of wording my letter, I so expressed myself as to be supposed to convey any indignity to your Excellency's commission, I must beg to assure your Excellency that my expressions were very unfaithful reporters of my intention. As I was

Repudiation of
any disrespect
for governor.

addressing the Colonial Secretary, I might from that circumstance have been led into a more familiar mode of expressing myself, than I should have used, had I written immediately to your Excellency, towards whom my whole course of correspondence, since your Excellency has been in this Government, bears testimony to the greatest respect and consideration.

1828.
26 Feb.

Repudiation of
any disrespect
for governor.

I hope, Sir, that this explanation will satisfy your Excellency that I had no intention to offer any indignity to His Majesty's Commission by the form of words, in which my letter to the Colonial Secretary was expressed.

Having offered this explanation of my Letter to the Colonial Secretary, I must beg that your Excellency will excuse my entering into the vindication of any opinions, I may have entertained, or any proceedings, I may have adopted, as a Judge of the Supreme Court.

Vindication
of procedure.

Bound by the solemn obligations of my Office and my Oath, I must discharge my duty according to my conscience, uncontrolled by any authority but the Law. Had I so far forgotten that duty as to hold the shifting opinions, or to be influenced by the motives which I feel to be implied in your Excellency's Letter, I should be unworthy to retain the high station, in which His Majesty has been pleased to place me. While I excuse myself, however, from accounting for my judicial conduct to your Excellency, I must reserve to myself the privilege of clearing my Character from imputations, which I cannot but consider unmerited, in the letter which I shall have the honor to address through Your Excellency to the Secretary of State.

I have, &c.,

F. FORBES, Ch. Justice.

[Enclosure No. 11.]

GOVERNOR DARLING TO CHIEF JUSTICE FORBES.

Sir,

Government House, 20th February, 1828.

It may be useful, as serving to prevent unnecessary discussion on the matter which you inform me, in your letter of the 18th inst., you propose submitting to the Secretary of State, if I apprise you in this Stage of the proceeding that I cannot concur in or do not comprehend the view which you have taken of the case.

Denial by
governor of
interference
with "judicial
conduct."

It would appear by the last Paragraph of your Letter that you suppose (though it is so foreign to the fact, that it cannot be the case) that I had interfered with your "*Judicial conduct*." It is not improbable, it is indeed evident, I do not correctly understand the meaning, which you attach to the term "*Judicial conduct*," as the present question, according to my conception, has

1828.
26 Feb.

Denial by
governor of
interference
with "judicial
conduct."

no reference whatever to any judicial proceeding. But merely relates to an *official arrangement*, as will be seen by the Correspondence.

Having stated in your Letter of the 15th December (which communication was perfectly gratuitous on your part, it not having occurred to me to request your opinion on the subject) that you considered the Office of Registrar might be conveniently retained, "*subject to certain modifications of its duties*," I wrote, on that Office becoming vacant two months subsequent to the date of your Letter, to request that you would point out any arrangement, which might appear more convenient for the performance of the duties of Registrar than that which existed.

My Letters of the 15th and 16th are confined to the same point, the question being consequent on your own proposition.

My letter of the 18th inst. was written on finding you had demurred to the admission of Mr. Stephen as Registrar, stating the Grounds on which I had made the Appointment, and showing by Quotations from your Letter of the 15th December (which I was inclined to think from your present view of the case had escaped your recollection) that the reference, I made to you, was occasioned by the suggestions and propositions, which it appeared by your Letter, above alluded to, you were prepared to submit for my consideration as Governor.

The Secretary of State will be at no loss, Sir, to determine from this brief Statement of Facts whether in this proceeding there was any interference on my part with your *judicial* conduct.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO RIGHT HON. W. HUSKISSON.

(Despatch marked "Private and Confidential," per ship *Orelia*; acknowledged by Sir George Murray, 30th August, 1828.)

Sir,

Sydney, 26th February, 1828.

Having stated in my Despatch of this date, marked "Separate," that Mr. Forbes had expressed no doubt as to the legality of Mr. Stephen's appointment as Registrar, until he presented himself in Court to be sworn in, I cannot abstain from requesting your attention to the similarity of this proceeding on the part of Mr. Forbes to that, which took place in the case of the Stamp Act.* In the case of the Stamp Act, as I stated in my Despatches at the time, Mr. Forbes lay by for more than three weeks without saying a word as to the supposed irregularity of the proceeding, though the measure was made a subject of

Course adopted
by F. Forbes
in case of
stamp act.

* Note 188.

constant discussion in the Newspapers; when, just at the moment the Act was to come into operation, he signified his opinion to me that the measure was not legal.

1828.
26 Feb.

In the present case, we had been in correspondence two days, and he had written two letters to me, even complaining in one of them of a want of courtesy on my part in not having consulted him as to the person to succeed the late Mr. Mills; during the whole of this time, he made no allusion whatever to the illegality of the appointment, reserving himself, as would appear by his proceeding, for an opportunity of giving his opinion in open Court, thus treating the King's Commission with indignity and insult in the most public manner in his power.

Course adopted
on appointment
of registrar.

I may presume to think that the course, adopted by Mr. Forbes, could not have been occasioned by any doubt in his mind as to the legality of the appointment, Mr. Gurner, a Clerk in the Office of the Supreme Court, whom I understand it was Mr. Forbes's wish should have succeeded on the present occasion, having been appointed Registrar during Sir Thomas Brisbane's administration on the immediate recommendation of Mr. Forbes. It is, therefore, evident he could only have adopted this course of proceeding, as a means of manifesting his contempt of the Government, which, being no longer permitted to direct as during Sir Thomas Brisbane's administration, he has exerted himself to set aside and to lead the Public to believe, as was his object in the case of the Stamp Act, that all power virtually rests in the Chief Justice.

Reasons for
action of
F. Forbes.

I now understand that the arrangement, which has been made with respect to the Master, is illegal. It certainly appears inconsistent with the 9th Section of the Charter, as pointed out in the Enclosure No. 9 to my "Separate" Despatch of this date, though adopted on the express recommendation of the Chief Justice.

Illegality of
arrangements re
duties of
master.

In endeavouring to make it appear that I have interfered with the Judicial proceedings, Mr. Forbes is fully aware that his resistance in this respect would be likely to encourage a strong popular feeling in his favour; as a Judge, being a Martyr to the maintenance of the Law in opposition to the Government, would strengthen his cause in the Eyes of those, who do not take the trouble to look below the surface.

Popularity
courted by
F. Forbes.

I cannot omit mentioning in this place that I have witnessed, on more occasions than one, Mr. Forbes's dissatisfaction, when he has been required, Sir, by your predecessor Earl Bathurst to report through the Governor; and I might instance the occasion of his being called on to report on the division of the duties of the Judges, when a second Judge was first appointed, without

Objection of
F. Forbes
to certain
instructions.

1828.
26 Feb.

Interpretation
of law by
F. Forbes.

adverting more particularly to the nature of that arrangement, as I might do, were it necessary, to shew that the Chief Justice is not quite so much alive to the legality of measures, which he himself recommends as to those adopted by others. Personal as well as public convenience is in some cases an admirable substitute for Law; and, so long as Mr. Forbes is the Interpreter, every measure will be legal or otherwise, as he may chance to consider it from the circumstances of the moment. Be assured, Sir, and it is not my object to deceive you, that this opinion is not confined to myself. Mr. Forbes's character is better known within the last few months, and is duly appreciated; and no one disputes his dexterity, however they may doubt his possessing other more valuable qualities.

Course adopted
by F. Forbes on
N.S.W. act.

Ambitious
motives of
F. Forbes.

I shall feel it an imperative duty on me to address you specially on the subject of the new Bill.* Mr. Forbes's proceedings in this case shall be explained to you, and the advantage he took of me will appear evident. You may, Sir, rely on my assurance that he is *greedy* of power, almost beyond example; and you will see, on reference to the draft of the Bill, which he sent home and was submitted to Parliament, that, in proportion as he stripped the Executive, he has clothed the Judicial authorities, though already possessing powers, as appears by his proceedings in the case of the Stamp Act, which enabled him to render the proceedings of the Government and the Legislative Council a dead letter.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.
(Despatch per ship *Orelia*.)

Sir, Government House, 26th February, 1828.

Despatches
acknowledged.

I have the honor to acknowledge having received on the 24th inst. by the Convict Ship *Hoogley* the several Despatches, specified in the Margin,† from the Right Honble. The Secretary of State, to which I shall do myself the honor to reply as early as circumstances will permit.

I have, &c.,

RA. DARLING.

GOVERNOR DARLING TO UNDER SECRETARY HAY.
(Despatch per ship *Orelia*.)

Sir, Government House, 26th February, 1828.

Despatches
acknowledged.

I beg leave to acknowledge having received on the 24th inst. by the Convict Ship "*Hoogley*" your several letters, as

* Note 151.

† *Marginal note*.—Circular No. 2, 30th May, 1827; No. 48, 23rd August; No. 49, 2nd Sept.; Circular No. 1, 3rd Sept.; Separate, 3rd Sept.; Circular No. 2, 8th Sept.; No. 1, 20th Sept.; No. 2, 21st Sept.; No. 3, 1st October; No. 4, 31st October; No. 5, 31st October.

specified in the Margin*; and I shall do myself the honor to address you in reply to such as require to be answered, as early as circumstances will permit.

1828.
26 Feb.

I have, &c.,
RA. DARLING.

GOVERNOR DARLING TO RIGHT HON. W. HUSKISSON.

(Despatch marked "Private and Confidential," per ship Orelia; acknowledged by Sir George Murray, 30th August, 1828.)

Sir,

Sydney, 28th February, 1828.

28 Feb.

The day after I had closed my despatch of the 26th instant, marked "Separate," detailing the circumstances connected with the appointments of Master and Registrar of the Supreme Court, I received a Letter from Chief Justice Forbes, enclosing copies of two letters, which he informed me he had addressed to you on the above subject.

Transmission
of letter by
F. Forbes with
remarks.

My despatch above referred to contains so faithful an account of the circumstances as they occurred, and answers the Statements in Mr. Forbes's Letters so completely, that I might have confined my Explanation to that despatch, to which I beg your particular attention.

It appeared to me, however, that a distinct reply to each paragraph of Mr. Forbes's Letter would be more satisfactory; and I have, therefore, adopted this course, though aware it would occasion much additional trouble and lengthen the Statement perhaps unnecessarily, Mr. Forbes having repeated the same matters frequently, though in different forms.

Considering that my public despatch of the 26th contains every necessary explanation on the several matters adverted to by Mr. Forbes, I have judged it adviseable to transmit the enclosed Statements and Replies in this Private and Confidential manner, leaving it, Sir, to you to bring them forward in any way you may think proper.

In drawing up my Replies to Mr. Forbes's Statements, I have endeavoured as much as possible to conform to the directions, contained in your "Separate Letter" of the 3rd of September; but feelings of indignation at his mis-statements may have led me, anxious as I have been to avoid it, to transgress the bounds of temperate remark.

I shall satisfy myself, Sir, in this place by requesting your attention to one or two points without entering into the other matters contained in his Letters.

Mr. Forbes is pleased to state, in Paragraph No. 3, enclosure No. 3, that I did him the honor in October, 1826, to forward the

* *Marginal note.*—2nd September, 1827; 15th October; 20th October; 1st November.

1826.
28 Feb.

Denial of
statements by
F. Forbes.

Bill to England, which he had prepared. I have shown in my reply that the Bill was sent Home by Mr. Forbes without its having been communicated to me, and I did not see the Copy until December, two months after, so that *I did not forward the Bill as he states.*

The other point to which I allude will be found in Paragraph No. 6, enclosure No. 3. He says, when I received the Governor's Letter of the 18th instant, I was in the performance of a necessary function of my Office as a Judge; adding, that Letter relates to the *appointment* of Mr. Stephen, which was "*then*" under my "*Judicial consideration.*" As Mr. Forbes's chief object has been, even before the present controversy, to convey an impression that I have been in the habit of interfering with the Judicial proceedings, it may be seen by my reply to this Article whether this has been established. I need only state here that, so far from the subject of Mr. Stephen's *appointment* being under Mr. Forbes's *judicial* or other consideration, "when" he received my Letter of the 18th instant, the matter had been previously finally determined, Mr. Stephen having been sworn in certainly two or three hours before he could possibly have received that letter.

Alleged
distortion
of facts by
F. Forbes.

I need not draw your attention to the Sophistry, which is so apparent in Mr. Forbes's Statements; they are, I may say, naturally distorted to answer his crooked purposes, and his invention is put to the test in explaining past transactions (the Appointment of Mr. Gurner for example as Registrar), in order to prove the consistency of his present acts. It is impossible for me to characterise his proceedings otherwise than as a systematic opposition to the Government. He loses no opportunity of at least doubting the measures and the powers of the Governor. It is not long since, he disputed my right to appoint a Solicitor General, as he has now done to make the appointment of Registrar. He has further done every thing in his power to embarrass the Government by his strained interpretation of the Laws with respect to the Convict Population, and by his open countenance even in Court of Dr. Wardell and others, whose hostility to the Government has been unbounded.

Opposition of
F. Forbes to
government.

The communications, I have forwarded lately, will shew that the Crown and other Lawyers consider it quite useless to make any attempt to convict Dr. Wardell for Libel, supported as he is; and I have stated officially that the Prosecutions have therefore been dropped.

I cannot sufficiently apologise for taking up so much of your time; but, without meaning to complain, I may be permitted to say that my situation is extremely arduous, having to contend

with a man of acknowledged skill as a Lawyer, who is without principle; for the truth of which, I appeal to his own Statements.

1828.
28 Feb.

I have, &c.,

RA. DARLING.

[Enclosure No. 1.]

CHIEF JUSTICE FORBES TO GOVERNOR DARLING.

Sir, Sydney, 27th February, 1828.

I have the honor to enelose eopies of my Letters to the Seeretary of State upon the subject of the late appointment of Registrar of the Supreme Court. I would have enelosed the originals, but I have no private Clerk; and, as the Documents referred to will take some time to copy, I thought it would be better to enelose eopies of my Letters, that your Excellency might have leisure to make such remarks upon the subject as you might deem proper.

Letters
submitted for
transmission
to secretary
of state.

I have, &c.,

FRANCIS FORBES.

[Enclosure No. 2.]

LETTER from Chief Justice Forbes to the Right Honble. W.

Statement by
F. Forbes *re*
appointment of
J. Stephen, jr.,
with remarks
by Governor
Darling.

Huskisson on the subject of the Appointment of Mr. John Stephen, Junr., as Registrar of the Supreme Court. [with*]

REMARKS by Lieutenant General Darling on the Statement of Chief Justice Forbes.

Sir, New South Wales, 16th February, 1828.

I have the honor to lay before you the Copy of a correspondence between His Excellency the Governor and myself, relating to the Appointment of Registrar of the Supreme Court, in which I hold His Majesty's Appointment as Chief Justice. The eircumstanees, which induce me to address myself directly to you, Sir, are as follow:—

1. The Office of Registrar of the Supreme Court beacame vacant by the untimely death of the late Registrar, Mr. Mills. This unfortunate Gentleman put a period to his existenee on the 14th inst., and on the same day

[*Remarks by Governor Darling:*—I considered it necessary to fill up the vacaney without loss of time, as the Supreme Court was then sitting.]

the Governor addressed a Letter to me acquainting me that he had nominated Mr. John Stephen, Junr. (Son of Mr. Justice Stephen), to be the Suecessor of Mr. Mills, and requesting to be informed whether I would reecomend any other arrangement, as more convenient for the performanee of the duties of the Office, than that which before existed. Feeling a doubt whether the Governor's Letter referred to some arrangement for the temporary discharge of the duties attatched to the Office of Registrar,

1828.
28 Feb.

Statement by
F. Forbes *re*
appointment of
J. Stephen, jr.,
with remarks
by Governor
Darling.

until His Majesty's pleasure should be known, or merely to the detail of the duties of that Office, I wrote to His Excellency and requested to be more particularly informed. The reasons of this doubt upon my mind you will more fully understand, Sir, when you have read my letter* to the Governor, dated the 15th December, 1827, upon the subject of the ministerial Offices of the Court. The Governor was pleased to reply, that, it being his intention to inform Mr. Stephen of the duties he would have to perform, it occurred to him that I might have some suggestions to offer in that respect. Conceiving myself slighted by this unceremonious treatment, I expressed my sentiments to that effect to the Governor, and I intimated at the same time that I felt myself called upon by a sense of what was due to my office to appeal, Sir, to you.

2. The Office of Registrar of the Supreme Court is created in the following manner. It is enacted by Act of Parliament† that the ministerial Officers of the Supreme Court shall from time to time be appointed *in such manner*, as His Majesty shall by his Charter direct, and the Charter‡ (a printed Copy of which I have the honor to enclose) directs that there shall be (among other Officers) a Registrar, and that such Registrar shall be appointed *by His Majesty by warrant under His Royal Sign Manual*.

[*Remarks by Governor Darling*:—2. It appears, by the 9th Section of the Charter, to which Mr. Forbes has referred, that a *Warrant under the Sign Manual* was as necessary to the Arrangements made for the performance of the duties of Master (see Enclosure No. 9 to my Despatch of the 26th inst., marked Separate) as for the Appointment of Registrar. Mr. Forbes, who disputes the legality of that Appointment, *made the Arrangement himself for the performance of the duties of Master.*]

From this short view, you will perceive, Sir, that the Act of Parliament confines the power of appointing to such manner, as should be directed by the Charter; and the Charter directs that manner to be by His Majesty under the Royal Sign Manual. In strictness, therefore, any other manner of appointment is not in conformity with the Act of Parliament, or the Charter issued under it.

Whether the Governor, therefore, had the power to appoint to the vacant Office of Registrar was a question of Law, raised upon the construction of the charter of the Supreme Court, which could only be determined by the Judges.

[*Remarks by Governor Darling*:—The "*Question of Law*" appeared to have been put at rest by a previous Appointment of Mr. Gurner to the Office of Registrar at the special recommendation of Chief Justice Forbes.]

* Note 190. † Marginal note.—4 Geo. 4, C. 96. ‡ Note 158.

And as it obviously presented itself on the face of the Charter, I humbly submit, Sir, that, before the Judges should have been called upon to sanction the doubtful appointment of an Officer of their own Court, some reference should have been made to them; and the more especially as, in a correspondence which I had with the Governor a short time since with reference to the proposed appointment of Mr. Francis Stephen as Prothonotary of the Court, I intimated to His Excellency that such Officer could only be appointed in the manner directed by His Majesty's Charter.

1828.
28 Feb.

Statement by
F. Forbes re
appointment of
J. Stephen, jr.,
with remarks
by Governor
Darling.

[Remarks by Governor Darling:—The Appointment of Prothonotary, as referred to, is not a case in point, inasmuch as the Situation of Prothonotary did not exist, but was proposed to be established. That of Registrar was an existing Office, and is indispensable to the proceedings of the Supreme Court. As the Court was sitting, when the vacancy occurred, no time was, therefore, lost in filling it up.]

3rd. But whatever opinion, Sir, your better judgement may form of the power of appointing a Registrar of the Supreme Court under particular circumstances, it will be conceded that it can only be justified upon the ground of the necessity of the Case. Had the Governor so far confided in me as to require my opinion, I should certainly have informed His Excellency that not only no necessity existed for filling up the Office of Registrar, but that any alteration in the existing state of the ministerial Officers of the Supreme Court, until His Majesty's pleasure should be made known, would be attended with many inconveniences and with no one advantage.

[Remarks by Governor Darling:—How could I possibly have conjectured he would have informed me, in the Month of February, that no necessity existed for filling up the Appointment of Registrar, when he had stated, in his Letter* of the 15th of December only two months before, "that this Office may be conveniently retained, subject to certain modifications of its duties."

I confess I do not quite comprehend Mr. Forbes, when he observes "*but that any alteration in the existing state of the ministerial Officers of the Supreme Court, until His Majesty's Pleasure should be known, would be attended with many inconveniences and with no one advantage.*"

Why did he then submit an alteration for the performance of the duties of Master. He was not bound to do so, if I had mistaken his intention in supposing he meant the alteration should be immediately adopted. But to confine his observation more immediately to the Office of Registrar, surely, I made no

1828.
28 Feb.

Statement by
F. Forbes *re*
appointment of
J. Stephen, jr.,
with remarks
by Governor
Darling.

"alteration in the existing State of Ministerial Officers of the Supreme Court" by filling up the Appointment of Registrar, which had just become vacant.]

My Letter* to the Governor, dated the 15th December last, will explain the reasons for this opinion; and I refer to it with the more confidence, as it was written, before I could be supposed to contemplate the unhappy event which has since occurred. I must beg of you, Sir, as a personal favor to read that Letter with attention. It will explain my views with respect to the Offices of the Supreme Court; and I am sure, Sir, you will do me justice in believing that it was written with a singleness of view to the efficient discharge of the ministerial duties of the Court.

The Office of Registrar is one that can only be competently discharged by a person, previously versed in the principles and practice of the English Law.

[Remarks by Governor Darling:—I have no desire to disparage the merits of Mr. Gurner, the person whom Mr. Forbes wished to succeed on the present occasion, and for whom he had previously obtained the Appointment of Registrar. But I have some doubts as to his having been "*previously versed in the principles and practice of the English Law.*" He originally came to this Colony as a *Domestic* in the family of the present Sir John Wylde.]

Mr. Mills' appointment, I considered as a provision for past Services; it were impossible to suppose that he could have been expected to perform the duties of his Office; and, therefore, they devolved upon the Chief Clerk under my own superintendence. You will easily believe, Sir, that, in creating a new judicature and establishing a system of rules and orders, founded in the principles, but varying from the practice of the English Courts, I have had a task of some difficulty to perform; and that it has not been amongst the least of my labors to instruct the Officers in their different duties. Having accomplished this task, and being at length enabled to see the machinery, I had set in motion, work with a dispatch and economy beyond my expectations, it was but natural that I should feel anxious *that no unnecessary impediments should be thrown in the way*

[Remarks by Governor Darling:—*Impediments might have been thrown in the way by altering the existing Arrangements* But surely not by renewing an Appointment, which Mr. Forbes had stated might be conveniently continued in his Letter* of the 15th December.]

and I think that consideration of what was due to the public Service, as well as to my personal convenience, should have deferred any new appointment, until it could be ascertained

* Note 190.

whether it might not disturb the Arrangements, I had made, and interrupt the business of the Court. It were invidious to offer any remarks upon the personal pretensions of the Gentleman, whom His Excellency has been pleased to nominate as Registrar. I feel that, however qualified he might be, there has been a want of courtesy towards the Office, which His Majesty has entrusted to me, in nominating any person to an Office in the Supreme Court, the duties of which necessarily place him so immediately under me, without enquiring whether I thought him competent, *or knowing whether he might not be personally objectionable to me*, without any communication whatever except what ought perhaps to have been spared.

1828.
28 Feb.

Statement by
F. Forbes re
appointment of
J. Stephen, jr.,
with remarks
by Governor
Darling.

[*Remarks by Governor Darling*:—It could not be expected under present circumstances that I should consult Mr. Forbes. and, considering his intimacy with Mr. Stephen's family, it was not likely he could have any *objection* to Mr. Stephen *personally*.]

4th. I beg leave to say, Sir, that I do not offer the above remarks as a complaint. I only wish to submit it to you, Sir, whether, in any future appointments, which it may be within the Governor's power to make in the Supreme Court, it is not a respect due to the Judges to learn whether they have any objection to make, *or any observations to offer as to the expediency of such appointments*. I have, &c.,

FRANCIS FORBES, Chief Justice, New South Wales.

[*Remarks by Governor Darling*:—I can only repeat he stated, in his Letter* of the 15th December, *that the Office of Registrar may be conveniently retained*.

28th February, 1828.

RA. DARLING.]

[Enclosure No. 3.]

LETTER from Chief Justice Forbes to the Right Honble. W.

Huskinson on the subject of the Appointment of Mr. John

Stephen, Junr., as Registrar of the Supreme Court. [with†]

REMARKS by Lieutenant General Darling on the Statement of Chief Justice Forbes.

Sir, New South Wales, 26th February, 1828.

On the 16 inst., I had the honor to address a letter to you, relating to the Appointment of Registrar of the Supreme Court. Since that letter was written, I have had a further correspondence with the Governor upon the same subject, which it becomes necessary for me to lay before you, Sir, as forming a part of the case, which has been submitted to your consideration and superior judgment. Before I proceed to offer any remarks upon the new matter, which has been introduced into the correspondence, I

* Note 190. † Note 189.

1828.
28 Feb.

Statement by
R. Forbes *re*
appointment of
J. Stephen, jr.,
with remarks
by Governor
Darling.

must beg your patience, Sir, while I review the several facts alluded to, and place them in the Order in which they occurred. They are necessary to be known, to form a correct opinion of their relation to the several points under consideration.

1st. Upon the Opening of the Supreme Court in the Month of May, 1824, it had no Ministerial Officers whatever, appointed by His Majesty in pursuance of the Charter; and the question then arose whether the Governor could appoint such Officers, until His Majesty's pleasure should be known. *I doubted such a power being within the Governor's general Commission from the Crown; but, under the circumstances of necessity which existed for the Courts immediately proceeding to business, I recommended the following arrangement:* that Mr. Moore and Mr. Gurner, who had acted as Clerks in the late criminal and Civil Courts, should be retained in the Supreme Court, until the proper Officers should arrive from England; and, in order to clothe them with as much formal authority as could be had in the Colony, that the Governor should nominate them to the respective Offices of Prothonotary and Registrar of the Supreme Court, and I would appoint them as Clerks, conceiving that, by this union of the powers of the Court with those of the Governor, it would cure any defect of Appointment, or at least give the Appointments all the legal sanction, which it was possible under existing circumstances to give.

[*Remarks by Governor Darling:—*1st. I am of course not aware of the *doubts*, which Mr. Forbes may have entertained of the Governor's power to appoint a Registrar, at the time he speaks of. He admits that a Registrar was formerly appointed on his recommendation. Surely the necessity of filling up the vacancy was as great as in the former instance, the Office from its Establishment having become essential to the transaction of the public Business. *The powers given to the Governor by His Commission,** the sufficiency of which Mr. Forbes appears to doubt, are as follow, vizt. "And we do hereby authorize and empower you to constitute and appoint Justices of the Peace, Coroners, Constables, and other necessary Officers and Ministers. in our said Territory and its Dependencies, for the better administration of Justice and putting the Law into execution."]

You will perceive, Sir, that, in proposing this arrangement, I then entertained doubts how far Appointments, confined by Act of Parliament to a particular manner of making, could be filled up in other manner. *This arrangement itself proves the sincerity of my doubts, and affords me an effectual security against the unjust inference of having held conflicting opinions upon the powers of the Governor.*

* Note 185.

[*Remarks by Governor Darling:—“The following arrangement,”* which Mr. Forbes speaks of having made, appears indeed very ingenious, and is at least a proof of the consideration he has given the matter, and his dexterity in explaining it. It is sufficient to state in reply that Mr. Gurner *was actually appointed Registrar, at the recommendation of Mr. Forbes, according to the usual mode of notification without any qualification whatever.*]

2nd. In September, 1827, I received a communication from the Governor, requiring my opinion whether a Prothonotary was necessary for the Supreme Court. In my answer, dated the 28th of September, I stated it, as my opinion, that the Office was not required; and I added, in the following words, “referring to the 9th Section of the Charter, Your Excellency will observe that the Appointment of Prothonotary must be made by Warrant under His Majesty’s Sign Manual.” *This last case is exactly in point with that of the Registrar; it was of very recent occurrence, and completely establishes the consistency of opinion, I had always entertained, that the Officers named in the Charter could only be regularly appointed under the Royal Sign Manual.*

[*Remarks by Governor Darling:—2nd. The appointment of a Prothonotary* does not, I think, appear to be a case “*exactly in point,*” as stated by Mr. Forbes. The Office of Prothonotary did not exist, Is not provided for in the rules of Court, while that of Registrar did exist and is indispensable to the transaction of the public Business.

As to establishing the consistency of his Opinion, Mr. Forbes does not, I presume, mean to contend, if by any fatality the whole of the Officers of the Supreme Court were to die, that the Governor could not fill up the Vacancies, and that the Administration of Justice must be suspended, until some such ingenious arrangement could be made, as that which enabled him formerly to recommend Mr. Gurner for the Situation of Registrar.]

3rd. *My Letter* of the 15th December, 1827,* has been already referred to. It was intended for the Secretary of State, and only addressed to the Governor as the most respectful way of communicating my Sentiments to His Majesty’s Government. As the whole object of that Letter appears to have been misunderstood, I must briefly explain the circumstances, under which it was written. I had been required to prepare the Draft of an Act for the administration of Justice, such as my experience in the Colony would enable me to recommend.

[*Remarks by Governor Darling:—3rd. His Letter of the 15th December* does appear to have been intended for the Secretary of State; but Mr. Forbes, when called upon afterwards, immediately submitted an arrangement for the performance of the duties of

1828.
28 Feb.

Statement by
F. Forbes re
appointment of
J. Stephen, jr.,
with remarks
by Governor
Darling.

1828.
28 Feb.

Statement by
F. Forbes *re*
appointment of
J. Stephen, jr.,
with remarks
by Governor
Darling.

Master, which arrangement moreover appears to be contrary to the 9th Section of the Charter, to which he refers, and which is as follows: That all persons, who shall and may be appointed to any Office in the said Court, whereof the duties shall correspond to those of Master, shall be so appointed by His Majesty. Contrary to this, the duties, heretofore performed by the Master, have been assigned by an arrangement made by the Chief Justice to the Officers and Clerks of the Supreme Court.]

I accordingly prepared the Bill, which the Governor did me the honor to forward in October, 1826, and which was laid before the House of Commons and ordered to be printed in May, 1827.*

[*Remarks by Governor Darling:—*I cannot suppress my surprise at Mr. Forbes's adverting to *the transmission of the Draft of the new Bill*, recollecting, as he must the course which he pursued on that occasion. Altho' I felt the insult, which was offered to my Situation by his forwarding a Bill to England for the administration of Justice in this Colony, of which I was the Governor, without communicating it to me, I bore it in silence rather than risk a disunion amongst the Members of the Government. He speaks of *my having done him the honor to forward the Bill in October, 1826*. I shall not express the indignation, I feel at this statement, tho' I see it is intended to cloak his indecorous proceedings on the occasion alluded to. The *fact* is simply as follows:—Mr. Forbes came at night to my Secretary's Office, when the Letter Bag was being closed, and, without seeing me, put *the original Draft of the Bill himself into the Bag*, which was sent off at day Break the next morning. I was not even aware of the circumstance, being exceedingly occupied at the moment, until my Secretary informed me the following day.

The matter lay over in the hurry of business; but, perceiving that Mr. Forbes expressed no intention of communicating the Bill to me, though I had shewn him one which Mr. Bannister had prepared, that I at length intimated my wish to see *his Bill*, and a Copy was shewn to me in the Month of December, *two months after he had forwarded the Original*, and during which time he had kept me in ignorance of what he had recommended. How can Mr. Forbes presume to remark on my want of courtesy to him, with these facts fresh in his mind. His statement that *I forwarded the Bill to England* is a proof how sensible he is of the impropriety of his having sent it home, without communicating it to me. It may not be unimportant to observe that, at the period to which I now allude, I considered that we were on the most friendly terms. Others however had perceived that Mr. Forbes was not acting in perfect unison with the Government.

* Note 151.

The events of that moment, in which I was immediately concerned, will be received as some excuse for my not having looked so particularly as I ought to have done into the nature of his Bill. Some alterations were suggested, when he shewed me the Copy of the Bill in December, and I never saw it afterwards. So that I not only did *not* forward either the Original or Duplicate (tho' Mr. Forbes states I did him the honor to send Home the former in October, 1826), and I am not aware that the Duplicate ever was sent to England. This, however, can be immediately ascertained by reference to Mr. Forbes's communications to the Colonial Office.]

1828.
28 Feb.

Statement by
F. Forbes re
appointment of
J. Stephen, jr.,
with remarks
by Governor
Darling.

I considered it as part of the duty enjoined upon me to prepare a Draft of the new Charter, which would necessarily follow the Bill; and, as soon as I was informed that the draft I had submitted had been approved by His Majesty's Government, I addressed my Letter* of the 15th December to the Governor.

[*Remarks by Governor Darling*:—It will be observed that he states, "*I considered it as part of the duty enjoined upon me to prepare a draft of the new Charter.*" This I conclude has also been forwarded; but I never heard of it, until I received the Letter, to which I am now replying, tho' he states that he addressed his letter of the 15th of December to me, as soon as he was informed the Bill or the Charter had been approved; but still he says nothing of his having prepared the Charter in his Letter to me, tho' that Letter related almost entirely to arrangements, respecting the Ministerial Officers of the Supreme Court to be provided for by the Charter.]

The Letter itself bears upon its first page the object, for which it was written, and contains a request *that it might be transmitted to the Secretary of State*. I assumed, as of course, that, if my suggestions were approved, they would be referred to the Law Adviser of the Colonial Office, when the new Charter should come under consideration.

[*Remarks by Governor Darling*:—He did request *that his Letter of the 15th December might be forwarded to the Secretary of State*, and it was forwarded by the first opportunity.]

What I recommended could only be done by the Charter; and I am at a loss to conjecture how, from that circumstance, my Letter could have been mistaken. It was intended, Sir, for you; it was addressed through the Governor from a sense of personal respect to him; and I feel assured that, at your hands, Sir, it will be treated with courtesy, and adopted so far as it may tend to the public Service.

[*Remarks by Governor Darling*:—He says, "*What I recommended could only be done by the Charter.*" If this be really the

* Note 190.

1828.
28 Feb.

Statement by
F. Forbes *re*
appointment of
J. Stephen, jr.,
with remarks
by Governor
Darling.

case, and he supposed his Letter had been mistaken, why did he not apprise the Governor of the mistake rather than induce him to persevere by submitting an arrangement for *immediate adoption* by the local Government (I allude to the discontinuance of the Office of Master, see my Despatch No. 5 of the present year), which he now states "could only be done by the Charter."

The whole of the Passage in his letter, to which I now allude, deserves particular attention, and, coupled with the ingenious arrangement, pointed out in Paragraph No. 1 of this Letter, furnishes pretty good proof of the principle on which he acts.]

4th. Shortly after the date of my Letter of the 15th December, the Office of Master became vacant, and *I recommended its discontinuance until His Majesty's pleasure should be known*. This advice was in perfect keeping with my previous letter. I entertained a hope that the Office would not be filled up in England, after my letter should be received; and I was anxious to avoid any question being raised in this Colony as to the right of Appointment under the Charter.

[*Remarks by Governor Darling*:—4th. Mr. Forbes states that, "shortly after the date of my Letter of the 15th December, the Office of Master became vacant, and *I recommended its discontinuance until His Majesty's pleasure should be known*," having said in the Paragraph immediately preceding that, to which I am now replying, that "*What I recommended*" (that is respecting the Master and the other Ministerial Officers of the Supreme Court) "*could only be done by the Charter.*"]

In proposing a temporary arrangement, at the invitation of the Governor, for the discharge of the duties of Master, I merely intended to shew how those duties could be performed without inconvenience to the Court and with a saving to the Public. I proposed that the Chief Clerk should tax Bills of Costs, and the Judges should decide upon matters of reference, instead of sending them to a Master. I proposed this, not to obtain the Governor's sanction, *quoad* the performance of those acts of Court, but to prove that we could do without a Master, and thereby to prevent two things, an unnecessary expense to the public and an unnecessary question of patronage in the Supreme Court.

5th. I come now, Sir, to those circumstances, which are immediately connected with this Letter; on the 16th inst., Mr. John Stephen presented himself before the Supreme Court, and exhibited his Letters patent appointing him Registrar of the Court. You are well aware, Sir, that Instruments of this high nature are open to the Court, like all other Grants, to see how far they are valid. In making Letters patent, therefore, many essential

forms are necessary to be observed; *they must pass through a succession of Offices, whose business it is to take care that they are regular and proper.*

1828.
28 Feb.

Statement by
F. Forbes re
appointment of
J. Stephen, jr.,
with remarks
by Governor
Darling.

[*Remarks by Governor Darling:—*5th. I wish Mr. Forbes had pointed out through *what Offices in this Government* Letters Patent usually pass. It would then have been seen whether there was any extraordinary irregularity in the case of those granted to Mr. Stephen.]

I have occasion to know that, in Mr. Stephen's case, not one of those essential forms of law was observed. *The Officers of the Crown were neither consulted as to the legality of his appointment nor the form of his Commission.* His patent was prepared by order of the Governor in the Office of the Colonial Secretary, and issued without any other form than the signature of the Governor and the Seal of the Colony. Had the Law Officers been consulted, I cannot but think they would have recommended some previous communication with the Judges, or some course more in accordance with that deliberation and enquiry, which always precede appointments in the Law department in England. Mr. Justice Stephen and I took time to look into this Commission.

[*Remarks by Governor Darling:—*It was not thought necessary to refer to the Law Officers, as the legality of the appointment was considered to be established by the precedent of Mr. Gurner, who was appointed Registrar on the recommendation of Mr. Forbes himself. As to the *form*, all Commissions and Letters Patent are drawn up according to established Forms; and, in this case, the Patent to Mr. Stephen was an exact Copy of that granted to his predecessor, the late Mr. Mills, and was prepared, as all other Patents have been, and the same formalities were observed. The name of Mr. Justice Stephen, poor Man, appears to be very unnecessarily made use of on this occasion.]

In the afternoon of the same day, I received a Letter from the Colonial Secretary informing me that the Governor had been pleased to appoint Mr. John Stephen Registrar of the Court; to this communication, I wrote a short answer to the following effect: that Mr. Stephen had that morning exhibited his Patent, professing to appoint him Registrar, but that, as the matter was then under the consideration of the Court, I must decline entering into the legality of the Appointment. This letter* was followed by one from the Governor, addressed to me, in which the terms "professing" and "legality" were considered as offering an indignity to His Majesty's Commission. I will not trouble you, Sir, with any further observations upon this part of the Governor's letter, than to say that I immediately disclaimed any intentional disrespect in the form of words, in which I had*

* Note 191.

1828.
25 Feb.

Statement by
F. Forbes re
appointment of
J. Stephen, jr.,
with remarks
by Governor
Darling.

expressed myself. The Letter itself, as well as my explanations, are all before you; and to your decision, I shall most respectfully submit. But, at this moment, I am at a loss to discover upon what ground my letter to the Colonial Secretary can be charged with using irreverent expressions towards the Governor's Commission. I certainly intended no such thing; and, looking at my letter with the eye of business, and the circumstances under which it was written, I am yet to learn what expression it contains which can in fairness be interpreted as disrespectful to the Governor, to whom it was not addressed.

[*Remarks by Governor Darling:—*He says, *in the afternoon of the 16th, he received a letter from the Colonial Secretary, informing him of Mr. Stephen's Appointment.* That he replied, as the matter was then under the consideration of the Court, he must decline entering into the legality of the Appointment. Mr. Forbes was informed of Mr. Stephen's Appointment on the 14th, two days before; had written me two Letters on the subject, and had ample time to consider the legality of the appointment, before Mr. Stephen presented himself to be sworn in.

It is unnecessary for me to remark further on the indecorous Style, adopted by Mr. Forbes, than I have already done (in my Despatch of the 26th inst.) in his answer to the Colonial Secretary, wherein he speaks of the Patent, issued in the King's name, "professing" to appoint Mr. Stephen Registrar, on the legality of which he then thought proper to express his doubts, though he had avoided doing so to the Governor previously, when in correspondence with him on the subject. To adopt his own phrase, the style of his Letter "was in perfect keeping" with his proceedings in Court on the occasion alluded to.]

6th. The question, Sir,* of the right of appointment to the vacant office of Registrar of the Supreme Court, it were unnecessary now to argue. I have admitted Mr. Stephen, and sworn him into Office, and *I have done so because I would not differ with the Governor.* I offer no opinion upon the abstract question of his Appointment. I will assume that it belongs of right to His Excellency.

[*Remarks by Governor Darling:—*6th. Mr. Forbes says *he admitted Mr. Stephen, because he would not differ with the Governor.* I presume he would not have done so, had he considered the Appointment illegal. How could he doubt "that he was duly appointed to his Office." He was appointed by a similar Instrument to that of the two previous Registrars, Mr. Gurner and the late Mr. Mills.]

But there cannot be a doubt that, as a Judge of the Supreme Court, called upon to admit an Officer into that Court, I was not

merely authorized, but I was bound to look into his Commission, and to satisfy myself *that he was duly appointed to his Office and qualified to fill it.*

[*Remarks by Governor Darling:—“As to his being qualified to fill it.”* I had enquired and been informed it was not necessary that the Registrar should be a Lawyer; and I had also heard that Mr. John Stephen had been admitted a Member of the Society of Lincoln’s Inn. I apprehend there is no doubt whatever as to Mr. Stephen’s qualification.]

It is said by Lord Coke, in treating of the Ministerial Officers of Courts, “that the Law doth ever appoint those, who have the greatest knowledge and skill to perform that which is to be done. The Officers and Clerks are but to enter, enrol, or effect that which the Judges do adjudge, award, or order; the insufficient doing whereof maketh the proceedings of the Justices erroneous; than the which nothing can be more dishonorable and grievous to the Justices, and prejudicial to the Party. If an Office, which concerns the administration or execution of Justice, be granted by the King to him, who has not knowledge to execute it, *it will be void, and the Court may refuse his admittance.*” A short parallel case, which occurred in the Court of Exchequer, will clearly illustrate this doctrine; *John Denington was appointed by letters patent to the Office of Chief Remembrancer* (an office corresponding with that of Registrar in the Supreme Court), but the Court refused to admit him, observing, “that the grant of such an Office to an unskilful person was void, and that there were many precedents of denying admission to such Officers for want of skill.” The Act of Parliament, under which the Supreme Court of this Colony is held, empowers the Judges to exercise the same authority in New South Wales, as may be exercised by the Judges in England.

[*Remarks by Governor Darling:—*At any rate, the circumstances of England and New South Wales are not parallel; *refusing to admit John Denington* as Remembrancer of the Exchequer would excite no feeling in England, while, in this confined spot, the Chief Justice “professing” in open Court to doubt the legality of a Patent, issued in the King’s name under the hand of the Governor with the public Seal of the Colony attached to it, *did* excite strong feelings of surprise at least.]

From this short view of the law, Sir, it will be seen that, as a Judge of the Supreme Court, I was bound to look into the legality of Mr. Stephen’s Appointment and his personal sufficiency; and, if I were not satisfied in both these respects, to consider his appointment void, and the more especially, as *the Instructions, which were given by the Governor to Mr. Stephen, directed him*

1828.
28 Feb.

Statement by
F. Forbes re
appointment of
J. Stephen, jr.,
with remarks
by Governor
Darling.

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to take upon himself those very duties, which, in my letter to the Governor of December, I had stated that I had placed in the hands of Mr. Gurner; and that they required so much skill in the practice of the Courts in England and knowledge of the proceedings in the Colony, that I doubted if I should find any other person in the Colony, who was competent to discharge them.

[*Remarks by Governor Darling:—Mr. Forbes observes that the Instructions, which were given by me to Mr. Stephen, assigned duties to that Gentleman, which he had placed in the hands of Mr. Gurner. The fault was not mine. I had called on him specially to suggest what duties Mr. Stephen should be required to perform. He declined doing so, and I thought I could not err in furnishing him with a Copy of the Instructions, which the Secretary of State had desired might be communicated to the late Mr. Mills on his assuming the Office of Registrar.*]

I was, therefore, in the performance of a necessary function of my Office as a Judge of the Supreme Court, when I received His Excellency's Letter of the 18th instant; that letter relates to the Appointment, which was then under my judicial consideration; it imputes to me the entertaining an incorrect view of the case, and acting inconsistently with my duty; it refers me to a former Appointment in the Supreme Court, and says that the same illegality must have existed then, as I now presume exists in the appointment of Mr. Stephen; and concludes with the hope that I will consider Mr. Stephen's patent, the legality of which I had been induced to doubt, a legal and sufficient Instrument.*

[*Remarks by Governor Darling:—I trust I shall stand excused in observing that Mr. Forbes, in his endeavour to fix on me a charge of interfering with his judicial conduct, has asserted that which is contrary to the fact. It will be seen that Mr. Forbes states in the passage, to which I am now replying, "I was, therefore, in the performance of a necessary function of my Office as a Judge of the Supreme Court, when I received His Excellency's Letter of the 18th inst.:—that letter relates to the Appointment, which was then under my judicial consideration."*

"When" Mr. Forbes received my Letter of the 18th inst., Mr. Stephen had been already admitted and sworn into Office; consequently this Appointment could not have been then under Mr. Forbes's "judicial consideration."]

This letter was addressed by the Governor to me, as a Judge; *it related directly to a question under my judicial cognisance; and the question itself one, in which the Governor was in some respects a party. That His Excellency intended to influence my conduct as a Judge, I do not believe. But that his Letter to me was such, as His Excellency's more mature consideration would*

not have allowed him to write, will I think be admitted. My Oath of Office instructs me "that, in case any such letters come to me contrary to the Law, I shall do nothing by such letters but certify the King thereof, and proceed to execute the Law notwithstanding such Letters."

I have made these explanations at some length, because I was anxious, Sir, to put you in possession of every fact, which has been drawn into discussion, however remotely connected with the Case. In conclusion, however, I must bring back the true point of reference between the Governor and myself, to the simple issue in which it was placed by my first letter; to that letter, Sir, I must respectfully pray your attention.

I have, &c.,

FRANCIS FORBES, Chief Justice, New South Wales.

[*Remarks by Governor Darling*:—I shall now proceed to furnish such evidence of what I have stated, as I trust will be received as a proof of its correctness. Mr. McLeay, the Colonial Secretary, called on me, in the course of Monday, the 18th, and enquired if I had written to the Chief Justice on the subject of the letter,* which he had received from him on the 16th. I told him I had not; it had taken me some time to prepare the letter, being of a circumstantial nature, and that it was not yet copied. At the time I was speaking to him, the Letter[#] was brought in for my Signature. I signed it and desired my Secretary to send it to Mr. Forbes. Mr. Macleay then produced a Note, which he had received from Mr. Stephen that morning, written at the Supreme Court, informing him *that he had been admitted and sworn in*. Thinking it proper, however, that Mr. Forbes should be apprised of my Sentiments, I sent the Letter, though I was aware the object had been already answered, Mr. Stephen having been admitted.

I need only ask, can any further proof be necessary that Mr. Stephen's *Appointment* was *not* as Mr. Forbes states, "*when*" he received my Letter of the 18th inst., "*then*" under his "*Judicial Consideration*." It is quite clear that the case must have been disposed of *two or three hours*, before he could have received my Letter; and consequently the Appointment could not have been "*then*" under his "*Judicial consideration*."

I shall abstain from adding another word.

RA. DARLING.]

* Note 191.

1828.
28 Feb.

Statement by
F. Forbes *re*
appointment of
J. Stephen, jr.,
with remarks
by Governor
Darling.

COMMENTARY

ON

DESPATCHES

JANUARY, 1827—FEBRUARY, 1828.

Note 1, page 1.

Assignments of Convicts.

These were contained in letters, which were a repetition of one another, subject to the necessary alterations in names or figures. The usual type of a letter, covering an assignment of convicts, is exemplified in the despatch from Sir H. E. Bunbury to Governor Macquarie, dated 16th January, 1816 (*see* page 1, volume IX), and of a letter, nominating convicts to be sent to Norfolk island, in the despatch from under secretary Hay to Governor Darling, dated 22nd September, 1826 (*see* page 584, volume XII). All similar letters have been omitted from the text of this volume. When any additional matter has been added to the usual form, the letter has been printed *in toto*.

Note 2, page 9.

The humble Memorial of James and William Macarthur.

With the duplicate original of this despatch, numbered 4, which is preserved in the Mitchell library at Sydney, this memorial is not included, but the following two letters are added:—

“MESSRS. J. AND W. MACARTHUR TO SURVEYOR-GENERAL OXLEY.

“Sir,

“Camden, 17th August, 1826.

“Having recently received letters from England, by which it appears that no reference from the Colony had reached the Secretary of State's Office on the subject of the 5,000 Acres of land, reserved by order of His Excellency Sir Thomas Brisbane for additional grants to us, subject to the decision of Earl Bathurst, We are fearful the papers may have miscarried.

“We do ourselves the honor, therefore, to transmit Copies of our Memorial of the 21st August, 1824, addressed to Sir Thomas Brisbane, and the letter of the Private Secretary in reply thereto, bearing date the 1st September following, which we shall feel obliged by your submitting to His Excellency the Governor with our respectful request that they may be again transmitted to Earl Bathurst.

“We have, &c.,

“JAMES MACARTHUR. WM. MACARTHUR.”

“SURVEYOR-GENERAL OXLEY TO COLONIAL SECRETARY MACLEAY.

“Sir,

“Surveyor-General's Office, 29th August, 1826.

“I have the honor to transmit herewith a letter from Messrs. James and William MacArthur, covering copies of a Memorial addressed by those Gentlemen to Sir Thos. Brisbane on the subject of a Grant of Land, together

with the Private Secretary's answer thereto. and requesting that I would submit the same to His Excellency the Governor with their respectful request that these Papers may be again transmitted to Earl Bathurst.

"The 5,000 Acres of Land, alluded to in the Memorial, has been reserved in obedience to Sir Thos. Brisbane's instructions.

"I have, &c.,

"JOHN OXLEY, Sur.-General."

Note 3, page 10.

The mere circumstance of having been born in New South Wales.

The prevalence of a feeling of contempt for those, who had been born in the colony, or at "Botany Bay," as it was termed in colloquial language in England at that period, has been discussed in the introduction to volume XII (*see* page xiii).

Note 4, page 11.

The highest amount mentioned in the 3rd Report of Mr. Commissioner Bigge.

On page 48 of his third report, J. T. Bigge stated "it was proposed that for persons, who brought out real capitals amounting to £500, there should be granted 500 acres; £750, 640; £1,000, 800; £1,500, 1,000; £1,700, 1,280; £2,000, 1,500; £2,500, 1,760; and £3,000, 2,000 acres."

Note 5, page 13.

A Return of Lands.

The negotiations by which John Macarthur obtained possession of these lands have been summarised in note 147, volume X.

Note 6, page 13.

Also pages 109, 162, 276, 374, 467, 498, 505, 506, 515, 593, 625, 637, 703, and 779.

Under Secretary Hay to Governor Darling.

Copies of these letters are preserved in the record office, London, but there is no evidence available of their delivery in the colony.

Note 7, page 16.

Also page 438.

Numbered 25 and No. 27.

Despatch No. 25 was dated 2nd April, 1826 (*see* page 223, volume XII), and was received in the colony by the ship *John* on the 23rd of November, 1827. Despatch No. 27 was dated 7th April, 1826 (*see* page 227, volume XII), and was never transmitted to Governor Darling.

Note 8, page 17.

Any communication should in the first instance be forwarded to the Governor.

The "communication" had been submitted to the governor, and had been forwarded with a despatch dated 8th September, 1826; but this despatch had not reached England when Earl Bathurst wrote his despatch dated 18th January, 1826.

Note 9, pages 17 and 18.

Also page 560.

The Land at Parramatta.—Those . . . already adopted.

The grant to William Bligh comprised 105 acres, to be known as Mount Betham. It was situated on the northern and eastern banks of the Parramatta river, to the west of the modern Lennox bridge. The details of the surrender of this grant by Sir Maurice O'Connell, the son-in-law of Bligh, will be found on page xiii, volume VI.

This grant was resumed by Governor Macquarie by proclamation, dated 5th August, 1819 (*see* page 516, volume XI). It was the subject of a report by Governor Macquarie in 1814 (*see* page 339, volume VIII), by Sir Thomas Brisbane in 1825 (*see* page 515, volume XI), and by Governor Darling in 1826 (*see* page 362, volume XII).

Note 10, page 19.

Governor King had resigned his Office and delivered up Custody of the Public Seal.

It is difficult to understand an under secretary of state making this statement. The facts are that Governor Bligh arrived off Port Jackson on board the transport *Sinclair* on the 6th of August, 1806, and made his official landing at 11 a.m. on the 8th. He assumed the government of the colony on the 13th following, and up to that date Governor King held custody of the public seal and administered the government, although such action was illegal after Bligh had landed in the colony. The three grants made by King to Bligh were dated 10th August, and, although the grant at Parramatta was resumed, the grants in the neighbourhood of Sydney and Rouse hill remained in the possession of the heirs of William Bligh.

Note 11, page 21.

Sir P. G. King.

This is an error. Philip Gidley King never received the honour of knighthood. He returned to England on H.M.S. *Buffalo* in 1807, and died on the 3rd of September, 1808, at the age of forty-nine years.

Note 12, page 33.

The First Person who explored the Country.—A Passage thro' the dividing Range.

William Lawson was commandant at Bathurst from August, 1819, to November, 1823. In the year 1821 he conducted an expedition from that town for the purpose of marking out a road to Liverpool plains, then recently discovered by John Oxley. He subsequently effected a crossing of the dividing range near the head of the Goulburn river.

Note 13, page 34.

Sir R. Darling.

This is an error. Governor Darling did not obtain the honour of knighthood until the 2nd of September, 1835, when he was created a knight grand cross of the royal Hanoverian Guelphic order (G.C.H.).

Note 14, page 47.

Mr. Raymond.

The particulars relating to James Raymond's emigration to the colony were detailed in despatches dated 14th September, 1825, and 11th July, 1827 (*see* page 59, volume XII, and post page 441).

Note 15, page 51.

Also page 785.

The Petition.

For some years previous to the year 1827, the necessity for some reforms had been agitated in the colony. Of these, extension of the principle of trial by jury and the initiation of an elective legislature were the most important. The question of a legislature was mentioned in an address to Governor Darling in January, 1826 (*see* page 144 *et seq.*, volume XII). The agitation was not confined to any one class of the community, but was general, and culminated in a requisition to the sheriff to call a public meeting on anniversary day, the 26th of January, 1827. This requisition was signed by D'Arcy Wentworth, Sir John Jamison, J. T. Campbell, G. and J. Blaxland, A. M'Leod, W. Lawson, G. Druitt, J. Machenry, T. Raine, Wm. Cox, Arch'd Bell, R. Wardell, S. Lord, R. Campbell, jr., S. Terry, Wm. Hutchinson, John Dickson, J. Connell, T. Moore, W. Redfern, R. and D. Cooper, and W. C. Wentworth. The meeting assembled at noon on that day, and was the largest meeting held in the colony up to that date. All classes were represented, and, as was reported in the *Sydney Gazette*, some members of all the families of "wealth and talent" were present except one, the exception being the family of John Macarthur. There were present long-established free settlers, retired members of the civil government and of the military, emancipists, and others. The adoption of the petition was moved by W. C. Wentworth in a lengthy speech, after which the petition was read by E. S. Hall. Sir John Jamison seconded the motion. G. Blaxland moved an amendment, which, after some discussion, was withdrawn. A second amendment was moved by D'Arcy Wentworth, and seconded by Dr. Wardell, and carried. The adoption of the petition as amended was then "unanimously carried by the Voice of Australia," to quote the words of the *Sydney Gazette*. Formal motions were then proposed and carried to present duplicates of the petition to the house of lords and house of commons in England, and entrusting the copies to the care of G. Blaxland to be carried to England. After carrying a motion of thanks to the sheriff, J. Mackaness, for acting as chairman, the meeting was dissolved at 3.20 p.m.

On the 25th of January, 1827, William Cox, who was one of the requisitionists for the meeting, wrote from Clarendon, near Richmond, to the sheriff, apologising for his inability to be present on the following day. Cox was one of the old established free settlers, and was formerly paymaster in the New South Wales corps, and his letter gives indication of the feelings current at the time. He stated that he was strongly in favour of the extension of trial by jury, and considered it preferable to the practice of two magistrates acting as assessors to the chief justice in civil cases, and of naval and military juries in criminal cases. He had been of opinion that the adoption of a representative legislature should be deferred for a few years; but, since reading the debates in the English parliament, when both government and opposition members had proposed paying the salaries of civil officers from revenues raised in the colony after the year 1826, he considered

that taxation by representation should be immediately introduced in order that the colonists might exercise some control over the revenue and expenditure.

Note 16, page 52.

The same footing.

In the year 1791, the statute 31 George III, cap. xxxi, was passed for "making more effectual Provision for the Government of the Province of Quebec in North America." By this statute, a colonial legislature was established (*see* note 45, volume XII).

Note 17, page 53.

By him forwarded.

The reference was to the reports forwarded by Sir Thomas Brisbane with his despatch dated 25th October, 1825 (*see* page 894 *et seq.*, volume XI).

Note 18, page 60.

Any notification.

The notification was contained in a despatch dated 2nd April, 1826 (*see* note 7).

Note 19, page 60.

Lord Bathurst's Despatch.

This despatch was numbered 58, and dated 8th August, 1826 (*see* page 479, volume XII).

Note 20, pages 64 and 118.

Major Mitchell.

Thomas Livingstone Mitchell was born on the 16th of June, 1792, and was the son of John Mitchell, of Craigend, in Stirlingshire. At the age of 16 years he entered the army as a volunteer, and three years later obtained a commission in the 95th regiment. He saw active service on the Peninsula, and for some time was on the quartermaster-general's staff, when he acquired a knowledge of field sketching and surveying. He was present at the battles of Ciudad Rodriguez, Badajoz, Salamanca, Pyrenees, and St. Sebastian, for which he received a silver medal with five clasps. On the 16th of September, 1813, he obtained his commission as lieutenant. After the conclusion of the war, he was sent on special service to Portugal to survey and sketch the battlefields. From 1818 to 1821 he was on the half-pay list. On the 3rd of October, 1822, he was promoted to the rank of captain, and on the 29th of August, 1826, to that of major, when his active military career terminated. His colonial career may be traced in subsequent volumes.

Note 21, page 67.

Dr. Halloran.

Particulars of Dr. Halloran's sentence of transportation will be found in a despatch dated 22nd July, 1825 (*see* page 36, volume XII).

Note 22, page 73.

A Settlement.

Captain Wetherall on H.M.S. *Fly* sailed from Port Jackson on the 18th of November, 1826, and arrived in Western port sixteen days later. A site for the proposed settlement was selected at the eastern end of Phillip island, at a place called Fort Dumaresq; but a few days later this locality was abandoned, and, on the 12th of December, the settlement was established at Red point, near the site of the modern township of Corinella. When the expedition arrived in the port, a small sealing station was found established on Phillip island. Captains Wetherall and Wright, the commandant, made strongly adverse reports on the inducements held out by the district to settlers. The settlement was destined to be soon abandoned. Viscount Goderich, on the 19th of July, 1827 (*see* page 450), wrote authorizing Governor Darling to use his discretion in the maintenance of the settlement. Governor Darling decided to abandon it, and sent the schooner *Isabella* to remove the whole establishment in January, 1828.

Note 23, page 74.

An opportunity of obtaining rank.

The "opportunity" was due to the death at Sydney of Sir James Brisbane on the 19th of December, 1826, when certain promotions became necessary on the ships of war then in Port Jackson (*see* page 86). F. A. Wetherall's fears were groundless (*see* page 451).

Note 24, pages 79 and 80.

An Article on the last Page.—A Notice in the first Page.

The "article" consisted of two judgments on ordinances proposed for the regulation of the press in India, as follows:—

"JUDGMENT PRONOUNCED BY MR. JUSTICE RICE.—I have read the case of the Press in India, before the King in Council; but still I think, the clause as to the charge in the proposed Rule is repugnant to the law of England, and that Policy did not, and does not require it. It is argued I think too much, as if the natives had been at all affected by the licentiousness of the Press; the mischief in Calcutta was wholly, I think, confined to the English, and would, I am persuaded, have remedied itself.

"Considering, as I do, that the liberties of England are part of the law of the land, and that they depend on the Freedom of the Press, I cannot conceive how a license, which is to stop its mouth and stifle its voice, can be consistent with, and not repugnant to, the law of England.

"Though I entertain this opinion, I shall not object to the Registry, because, as regards the repugnancy, I defer to the appellate authority, as I should on any point of law, which they had decided contrary to my judgment; and with regard to the policy and the expediency, I do not think the Legislature intended to leave them so much to the consideration of the court, as to the Government; which ought to be the better judge of such subjects, and which must now be presumed to have formed a proper judgment. It is not desirable, that the judicial should ever be mixed with the executive or combined with the legislative; and, Parliament having legislated so much for British India, it is a pity, I think, that a question of such vital importance with analogy to England should not have emanated in and had the sanction of Parliament.

"I feel further justified in acquiescing in the Registry (now that I have stated publicly my opinion) because the decision of the Council must be

known to Parliament, and if Parliament should object, it were easy to propose a Bill to limit and more actually define the local authority, and when one considers of whom the Privy Council consist, and who was the advocate for Mr. Buckingham, men all eminent in Parliament as well as the profession, one cannot avoid feeling that ulterior measures would have been adopted in England, if the opinion which I unhappily entertain as to their repugnancy, and the necessity of this Rule had been current and general.

"JUDGMENT OF MR. JUSTICE CHAMBERS. *Bombay, 10th July, 1826.*—In order to explain clearly the grounds of my opinion on the present occasion, I think it necessary to advert in a cursory way to the circumstances under which these regulations are presented to us. In consequence of the recent decision of the Privy Council against Mr. Buckingham's appeal, it has, I believe, been recommended by the Court of Directors, to the local Governments of Bombay and Madras, to propose that the Bengal Regulations regarding the Press should *totidem verbis* be registered and become a part of the local law of each of these Presidencies, and the Government of Bombay so far acquiesce in the views of the Court of Directors as to propose them for our Registration according to their recommendation. It appears to have been thought, that the decision in that particular case is tantamount to a legislative declaration, that the same or similar regulations are so consonant with the general policy of the Indian Government, that they need but to be proposed in order to be adopted. If indeed, that decision bore in any way directly upon the general question of the expediency of such regulations, there is no man in the situation of a Judge who would not feel great deference for such authority. But unless it could be shewn that such a decision bound us with the force of an Act of Parliament, even then I conceive, a Judge would, on the present occasion, feel it to be his duty to consider *de novo* the general principle, and exercise most conscientiously the discretion the legislature had vested in him. But when grounds may readily be suggested for that decision, wide of the principle upon which we are called upon respectively to consider the expediency of the present regulations, I am at a loss to imagine, what necessary and immediate connexion there is between the decision of the Privy Council and the proposal of them for our adoption. The decision of the Privy Council, stripped as it is of all the grounds upon which it was formed, presents to my mind merely a confirmation retrospectively of a solemn act of the Supreme Government in Bengal, in conjunction with the Supreme Court, upon a subject matter expressly within their authority, under circumstances, which, if true, might justify that act, and of the truth of which circumstances they alone were the competent Judges, what bearing or what material influence can such a decision have on our minds, who are called upon at another place, under totally different circumstances, to consider prospectively the expediency of introducing the same regulations, not as a remedy for any existing or imminent evil, but as a general and permanent act of legislation. The preamble it may be said was not proved, nor required to be proved to be true before the Council; but that I conceive could no more be done, than the Court of King's Bench could require the proof of any special finding of a Jury on a special case brought before them; and it does not therefore follow that the preamble is mere waste paper and unnecessary to form ground work for such restrictive regulations.

"All such regulations being confessedly respective of natural liberty to a much greater extent than it has ever been thought necessary to carry matters in our own country (I mean in the best time or in the way of permanent enactment), whatever distinctions may be made, by the terms *contra legem* and *præter legem*, to common understandings, they are as much opposed to

the ordinary notions of English law as light is to darkness; and necessity alone, and that of a very obvious permanent kind, can justify, in my judgment, their Registration. In all such cases of imperfect definition of legal rights, it is impossible not to see that the situation of the different places may require different enactments, and what may be necessary at one place may be perfectly superfluous at another. In the same way, even in the same place, it may be premature to introduce strong measures at one time, which at a riper period of society may be deemed highly beneficial. There is no subject indeed the consideration of which is acknowledged to require a sounder discretion with reference to local circumstances, or in which local circumstances have so direct an operation in determining the legality or illegality of particular measures. In every separate jurisdiction, therefore, it must be matter purely of discretion how far and when it is expedient to introduce respective regulations of this nature."

(In this lengthy judgment, the judge proceeded to consider the local expediency of introducing the regulations into Bombay, and held that there was not only no necessity for them, but that their introduction would be actually harmful. He concluded:—)

"I am of opinion that the proposed regulations are not expedient, and I decline giving my voice in favour of their being registered.

"Judgment of the Court—Regulation disallowed."

The "Notice in the first Page" was a government order, dated 30th January, 1827, which appointed J. T. Campbell, Henry Gillman, and G. G. Mills as members of a board to receive and report on applications for tickets of leave under the general order dated 3rd January (*see* page 3). The notice also pointed out that greater facilities were offered to obtain tickets of leave than formerly.

Note 25, page 80.

Also page 81.

The "Monitor" of the 3rd inst.

The note was as follows:—

"Colonial Secretary's Office, 23 Jan., 1827.

"THE Printer of the Monitor will be pleased to make up and send, with as little delay as possible, a complete set of that paper, from the 1st of July last to the present date, for transmission to England, to the Secretary of State, by the *Portland*.

"He will also have the goodness to forward one copy for the same purpose to this office regularly in future.

"T. C. HARRINGTON."

The comments by the editor were:—

"THE above order was by us duly honoured. We infer that the Government of this Colony meditate an attack on its free press, and in transmitting copies of the two independent journals of the colony to England, that it will point out such passages in them as this administration consider seditious or licentious. For ourselves, we are confident we never uttered an expression fairly construable into sedition, because we are too great lovers of a constitutional monarchy for it to be possible for us to be guilty of an offence so foreign to our nature. To have been licentious is still more impossible, because we are Bible Christians, and cannot be licentious in a moral sense. On account of their vice and hypocrisy, Christ called the priests and chief rulers of Judea serpents and a generation of vipers. In denouncing the Pharisees and Sadducees of this Colony, we have at times used strong

language—but such language did our hearts more honour than any thing we ever wrote—we glory in our warmth—and in the decline of life, if we shall be able to look back upon some acts of our lives with more complacency than others, it will be on those when we had the courage to risk fine and imprisonment in order to expose the vice of rank to scorn, and the oppression of power and wealth to execration!

“HAVING said thus much on behalf of ourselves, we refer to another public writer of whom, with regard to *independence*, it may be said ‘he has a *name* to live, while he is really dead.’ After coquetting with Government for half-a-year—after drinking claret day by day with His Excellency’s kinsfolk and been partakers of the Governor’s personal hospitality—all at once he wheels round to the popular cause—he deserts his patrons in the hour of distress—in the hour when, from a mistaken zeal generated by the *esprit-du-corps* of military habit, they had gone a little beyond the law—when by a dire but unforeseen and improbable casualty, that single step beyond the limits of the law had ended in the death of a brave man, unable to bear unmerited and unusual disgrace—we say, in the hour of their consternation and woe, when even a man’s enemies might have learnt to pity them, did certain men desert their patrons and friends, and from eating bread and drinking wine with them and theirs, did they denounce them in language which we could not read at the time without shuddering! This *was* licentious! This was as much beneath the dignity of the press, as it was opposed to its usual generosity! The patient demeanour of the party injured half atoned with us for his errors. His forbearance was truly redeeming, as far as so great an error could be redeemed. We felt that an extra-judicial punishment had been inflicted, which went to purge away much of his fault. How true is vice to itself! When selfishness guides the head and heart, how consistent are its deeds! To-day, when place and honour are wanted, men become apologists and partakers of hospitality with one, and bosom friends with another. Presently it is their interest to become popular, because others, sincere and honest to the people’s cause, were eclipsing them. Then ‘*drummers*’ and ‘*gallows*’ were words which, in their new zeal for the public, were flitting in the face of their ex-friends and benefactors uttered with the venom and fury of a *sans-culotte*!

“THUS we endeavour to atone for the licentiousness of which we admit some men to have been guilty. We hope by so doing His Majesty’s ministers will perceive that licentiousness will always draw down upon it in the colony that censure which will be sufficient to prevent it gaining ground; and consequently, that no license nor censorship will ever be necessary in New South Wales to prevent the intemperance of the public press.”

Note 26, page 81.

Four numbers of that Paper.

The issues of the 13th and 27th December, 1826, contained lengthy sub-leaders (the first filling more than two columns of the paper), in which the cases of privates Sudds and Thompson were criticised adversely to the government. The article in the issue of the 27th December concluded as follows, the quotation summarising both articles:—

“We regret the necessity, and commiserate the feelings of those the recital must hurt. We cannot help it; and once more we re-iterate, that

“SUDDS and THOMPSON were wrongfully transported, as may be seen by perusing the Act in Council!

“SUDDS and THOMPSON were wrongfully ordered (and we take the Act in Council again for our guide) to be worked in chains!

"SUDDS and THOMSON were illegally ordained to wear illegal chains—chains which were constructed, 'according to order,' for that specific purpose—chains which were the offspring of caprice, and the like of which no thorough bred Englishman ever before beheld!

"SUDDS and THOMSON were illegally taken out of the hands of the Civil Power by Military Authority!

"SUDDS and THOMSON were illegally punished without a Trial—were illegally subjected to a Military punishment without a military trial; or any trial sanctioning a military punishment!

"SUDDS died five days after he submitted to the illegal punishment, and though his death did not alter or extend the illegality of any of the enumerated acts, and though we cannot ascribe his death to them, or any of them, yet we are bound to admit that if mortal proof to that effect were obtainable, the deed which occasioned his death would, by our law, be termed murder, and the perpetrators could, by the Royal Clemency alone, be saved from the ——!"

In the sub-leader (a column in length) in the issue of the 30th of December, 1826, the proposal to pay the stipends of the clergy from the colonial fund was adversely and maliciously criticised. The last paragraph was typical of the whole article:—

"Can any man hear, with common patience, of the Clergy, who are the grantees of one seventh of the landed property in the Colony—a seventh so selected as to be equivalent to one half; and who, besides, lay claim to one seventh of the Colonial revenue or the police fund as it is called, becoming the stipendiaries of the people, and of being paid out of the Public Taxes! Shame! Shame! Shame!"

One other sentence from the body of the article may be quoted:—

"Can it be believed that England has been so misled as to act in the only way with reference to the Clergy, which can make the Clergy odious to the people?"

The issue, dated 27th January, 1827, contained a sub-leader, in which the appointment of captain Allman to the command of the police office at Newcastle was strongly condemned. It was stated:—

"Captain Allman is a Military Officer, and it is incompatible with the notions of Englishmen—incompatible with the practice of England, and purely anti-National, to induct a Military Officer into an appointment of a Civil nature. It is anti-Constitutional—it is un-British. . . . We cannot sanction this mark of military sway, or be silent when we see unjustifiable inroads upon the Constitution of the Realm. . . . And much as we approve of a legitimate bestowment of rewards and patronage on the military—much as we may hope for their occupation of good posts, we shall ever oppose their being put in command either of us or our Law Courts."

Note 27, page 82.

His Book.

The reference is to "A Statistical, Historical and Political Description of New South Wales and Van Diemen's Land," by W. C. Wentworth, of which the first edition was published in 1819. A second edition appeared in 1820, and a third in 1824, each edition containing much additional matter.

Note 28, page 96.

A Public Meeting on Wednesday last.

The day quoted by Governor Darling is an error. The meeting was held on Friday, the 26th of January.

Note 29, page 97.

Sir Thomas Brisbane's proceedings.

These "proceedings" have been detailed in notes 28 and 29, volume XII.

Note 30, page 97.

I brought the Conduct of the "Monitor" under Your Notice immediately after its establishment.

The *Monitor* newspaper was first published on Friday, 19th May, 1826. Governor Darling submitted reports on the conduct of the editor in despatches to Earl Bathurst dated 4th September, 1826, and to under secretary Hay dated 12th September, 1826 (*see* page 528 *et seq.* and page 579, volume XII).

Note 31, page 98.

The accompanying Paper.

In the issue of the *Sydney Gazette* dated 27th January, 1827, it was stated:—

"The Dinner was prepared by Mrs. HILL in her usual style, and was laid out in the New Court-house, the GOVERNOR having given permission for that purpose. At seven o'clock 125 Colonists sat down, the Sheriff being a guest and the only one. Our Readers will see, as the company did not retire till early this morning, that we have not had time to say more."

Note 32, page 99.

Institutions and Societies.

The following are quoted in the calendars for 1827 and 1828:—Agricultural Society; Benevolent Society; New South Wales Auxiliary Bible Society; Australian Agricultural Company; Australian Company; School of Industry; Chamber of Commerce; Australian Subscription Library; Turf Club; and Sydney Free Grammar School.

Note 33, page 101.

Another Paper.

The *Gleaner* was edited by L. H. Halloran, who was also the proprietor and publisher, and was printed by G. Eagar at 19 King-street. The first number appeared on Thursday, the 5th of April, 1827. The paper was published weekly on Thursday for seven weeks, and afterwards on Saturday. It had a chequered career. On the 17th of September, 1827, a tobacconist, named T. Horton James, obtained a verdict of £25 damages and costs against the editor for a libel, contained in some satirical verses. Dr. Halloran refused to pay, and the last number (No. 26) appeared on the 29th of September following.

Note 34, page 107.

The Grant . . . confirmed to them in Lord Bathurst's despatch of the 10th Instant.

The date is misleading (*see* note 37), the despatch being dated 10th January (10th ultimo). The grant was submitted for consideration by Governor Darling in a despatch dated 19th July, 1826 (*see* page 364, volume XII).

Note 35, page 110.

The Capture of the Brigs.

The brig *Lady Nelson* sailed from the settlement at Melville island in February, 1825, to procure fresh provisions. She was captured by pirates off the island of Baba, one of the Serwatti islands, which form a chain from the east end of Timor. The whole crew were murdered. The brig *Stedcombe* sailed from Melville island under charter to procure buffaloes from Timor. She was captured by pirates off Timor Laut, about sixty miles eastward of Baba. All the crew, with the exception of two boys, were murdered, and the brig was burnt.

Note 36, pages 115 and 654.

The Act.—8th Sect. of the 5th Geo. 4, Ch. 81.

The eighth section was as follows:—

“And be it further enacted, That so soon as any such Offender shall be delivered to the Governor of the Colony, or other Person or Persons to whom the Contractor, or such Nominee or Nominees as aforesaid shall be so directed to deliver him or her, the Property in the Service of such Offender shall be vested in the Governor of the Colony for the Time being, or in such other Person or Persons; and it shall be lawful for the Governor for the Time being, and for such other Person or Persons, whenever he or they shall think fit to assign any such Offender to any other Person for the then Residue of his or her Term of Transportation, and for such Assignee to assign over such Offender, and so as often as may be thought fit; and the Property in the Service of such Offender shall continue in the Governor for the Time being, or in such other Person or Persons as aforesaid, or his or their Assigns, during the Whole remaining Term of Life or Years for which such Offender was sentenced or ordered to be transported: Provided always, that for the Purposes of this Act, every Person administering the Government of a Colony, by whatever Name or Title he may be denominated, shall be deemed to be the Governor thereof.”

Note 37, page 120.

My letter of the 31st Ultimo.

This date is inaccurate, and is due to an error in dating the despatch when written. The copy, filed in London and now preserved in the record office there, was dated 31st January, but the original letter as received in the colony was dated 11th February (*see* page 107). This explains the apparent inaccuracies in the two letters. Similar errors or want of precision have been noted in previous volumes.

Note 38, page 137.

The view he has taken.

The opinion of chief justice Forbes was fully stated in October, 1827 (*see* page 608 *et seq.*). It is a curious coincidence that, whilst Governor Darling was discussing Forbes' opinion in his despatch dated 1st March, the opinion of Earl Bathurst (*see* page 116) was in course of transmission, and this opinion took the opposite view in the interpretation of the act.

Note 39, pages 139 and 147.

Mr. Horton's Private Letter.

This letter was dated 31st May, 1826 (*see* page 340, volume XII).

Note 40, page 144.

Messrs. Macleay and Lithgow to Governor Darling.

In the duplicate original of this despatch preserved in the Mitchell library at Sydney, this enclosure is replaced by the letter dated 23rd November, 1826 (*see* page 771, volume XII).

Note 41, page 147.

The first Colonial built Vessel, which has left for England.

The first sea-going vessel to be commenced in the colony was the government brig *Elizabeth Henrietta*, whose keel was laid down by Governor Hunter on the west side of Circular quay in the year 1797. She, however, was not completed and launched by Governor Macquarie until the 13th of June, 1816 (*see* note 58, volume XII). In the meantime, the ship *King George*, of 185 tons burthen, had been built and launched by Messrs. Kable and Co. in the year 1805. The *King George* was the first vessel of more than one hundred tons built in the colony; and, before she was launched, her owners had been compelled to enter into a bond not to navigate her beyond the limits of the territory (*see* note 234, volume V). The *Queen Charlotte*, J. T. Mauu master, sailed from Port Jackson on the 8th of March, 1827. She carried the following cargo, shipped by Robert Campbell:—294 pieces of cedar, 84 bales of wool, one package fur seal skins, and 17 cwt. New Zealand flax.

Note 42, pages 164 and 165.

"Separate" of the 4th of September.—No. 71 of the 13th September last.

The "separate" despatch relating to W. Dumaresq was dated 5th September (*see* page 541, volume XII); a private despatch to under secretary Hay on the same subject was dated 4th September (*see* page 535, volume XII). The despatch numbered 71 was dated 12th September (*see* page 579, volume XII).

Note 43, page 176.

3,200 acres without purchase and 12,160 acres by purchase.

This land is situated in the neighbourhood of the city of Bathurst. The original grant was at Mount Pleasant, from which the estate derives its name. This grant of 3,200 acres was promised by Governor Darling on the 10th of October, 1826 (*see* page 7), but in the deed of grant it was stated that the promise was given on or before the 25th of January, 1827. Stewart was authorised to enter into possession on the 8th of March following; it was confirmed by Sir George Gipps by deed, dated 18th October, 1839, and entered on record on the 2nd of December in the latter year. On the 27th of August, 1827, Stewart received permission from Governor Darling to purchase land, which was confirmed by Sir George Gipps on the 23rd of August, 1838, the area stated in the grant being 11,848 acres.

Note 44, pages 178, 179, and 180.

Page 347.—Page 348.

"The case of Roberts" was as follows:—After detailing the facts that Samuel Roberts, a prisoner for life, had been transported and assigned to a

settler at Hunter river, that his wife had followed him to the colony at her own expense, and applied to have her husband assigned to her, and that the request had been refused, the editor stated that "the woman consequently remains in Sydney, exhausting the means she is possessed of, without a protector, and her husband is retained at Hunter's River. We will not—we *dare* not trust ourselves to make any remarks on the conduct of Government in such affairs as these, since General Darling arrived in the colony. We shall leave our readers to be the prey of those silent, smothered feelings, which we experience ourselves, and which we hope will not consume us under their suppression."

In some remarks on the shooting of the native at Wallis plains, the government was criticised somewhat unjustly for a want of vigour in bringing all persons concerned to trial; and it was asserted that the magistrates at Hunter river had been guilty of neglect and should be removed from the commission of the peace. As instances of want of vigour in the government, the following were quoted:—"Taking away the earnings of the prisoner husbands of free women, assigned to the latter for their support, contrary to their wish, and putting them in the *Saving Bank*. Refusing to assign to other free women, natives of the colony or otherwise, their husbands, after permitting them to be married. Granting tickets of leave on such terms as to render it morally impossible in the parties to fulfil them. Sending prisoners to demi-penal settlements on the secret charges of their masters, served faithfully seven years. Keeping emigrants without their land, until, wearied out with official delays, they are obliged to return home. Continuing gentlemen in the commission of the peace after they have been arraigned in Parliament for inflicting torture, and who are odious to the people. None of these kinds of vigour should be approved in this or any other Government, if at any time or in any one instance they were to be practised."

In criticising the execution of the pirates, the editor wrote:—"When however we raised our eyes to view the five men who suffered on Monday last, and who the public felt suffered virtually, though not ostensibly, for crimes which the King had previously pardoned—that they suffered for accepting that liberty which the negligence of their keepers seemed glaringly to offer them—that they suffered for what *all* men without exception would have done in their circumstances, had they been equally confident of the success of their enterprize—that they suffered for endeavouring to escape from the land of Sodom and Gomorrah; a land so defiled, that being *men*, they felt a manly repugnance to enter and sojourn there—when we considered and reflected upon all these points, we could not look up at the victims trembling on the fatal scaffold without weeping—we recollected their magnanimity to those whom they had as much in their power as they were now in *our* power—we recollected the respect and tenderness which they used to their superiors when they were the *conquerors*—we heard too the murmurs of the crowd—some asking 'what are they hanged for—do they suffer for sparing men's lives?' and others, 'is this the way to reward humanity? will not pirates hereafter invoke the names of these men, while they devote the future captured to utter destruction?'"

The article, which was more than a column in length, continued in the same strain.

Note 45, page 179.

The facts.

The shooting of a native by mounted police at Wallis plains was reported by Governor Darling in despatches dated 6th October, 1826 (*see* page 623, volume XII), and 4th June, 1827 (*see* post page 399 *et seq.*).

Note 46, page 180.

Observations.

In another copy of this enclosure, preserved in the Mitchell library at Sydney, the five paragraphs following the 7th "extract" appear as a footnote after the 24th "extract" and observations thereon.

Note 47, page 183.

Sodom Island.

The reference was to Norfolk island, where it was notorious that sexual perversion of the worst kind was practised with little attempt at concealment.

Note 48, page 185.

2,000 acres by Grant.

On the 8th of September, 1825, Sir Thomas Brisbane promised Thomas Leely a grant of 2,000 acres, but this promise was not redeemed until the 7th of April, 1838, by Sir George Gipps. Governor Darling promised a grant of 560 acres on the 11th of January, 1827; this area was located on Coombing creek, near the modern town of Carcoar, and was confirmed by Sir Richard Bourke on the 9th of April, 1835.

Note 49, page 188.

Also pages 189 and 206.

An article in the "Monitor."

This article was as follows:—

"FIFTEEN men were confined in Sydney Gaol, upon a charge of cattle stealing. They were apprehended by warrants, and *without a hearing* sent to Sydney, and lodged in Gaol, *sans ceremonie*, where they lay some weeks. An application to the Supreme Court produced an immediate discharge. Three more (one named Craughwell, holding a ticket-of-leave eight years) were also detained in the watch house for a long time (one we believe near six weeks), and were upon the motion of Mr. Wentworth also set at liberty." Then followed the last two paragraphs quoted in Governor Darling's letter to judge Stephen (*see* page 208).

Note 50, page 190.

Colonel Sorell.

William Sorell had administered the government of Van Diemen's land or Tasmania from the 9th of April, 1817, to the 14th of May, 1824.

Note 51, pages 190 and 194.

The "Australian" of the 17th inst.—The issues.

In the leading article in the *Australian* newspaper it was stated that the secretary of state had decided to recall colonel Arthur from the government of Van Diemen's land or Tasmania, but the arrival of Governor Darling's despatch, dated 5th of December, 1825, had caused the decision to be altered. The editor severely criticised Governor Darling for giving expression to decided opinions as to the merits or demerits of the administration, after spending only five days at Hobart enjoying the hospitality of colonel Arthur and absorbing his opinions and statements.

The issue of the *Monitor* newspaper, dated 23rd March, 1827, contained drastic criticism on many different subjects. In the leading article the financial administration was generally condemned, and special reference was made to the excise duties on raw products, spirits, tobacco and cedar. In the sub-leader, the release of an aboriginal murderer and the execution of the pirates were mentioned, and caustic criticism was made of the multitude of government orders and regulations. A second sub-leader commented on the damages awarded R. Broadbear against the justices Bowman, MacAlister, and Macarthur (*see* page 324 *et seq.*). In other parts of the paper, the assignment of convicts to settlers in the country in preference to settlers in the town, the employment of convicts on the government farm at Emu plains, the refusal to admit the Reverend J. J. Therry to the Sydney gaol, and the sale of cattle by government were all the subject of separate and more or less lengthy criticism adverse to the administration and methods of Governor Darling.

Note 52, page 190.

Laythrop Murray.

R. L. Murray edited the *Colonial Times*, a newspaper published at Hobart, Tasmania, for the proprietor, A. Bent. On the 29th of March, 1826, Bent had been sentenced for libel by the supreme court in Tasmania to three months' imprisonment, to pay a fine of £200, and to find recognizances for his good behaviour, self in £200 and two sureties each in £200. In consequence, the next issue of the *Colonial Times*, dated 7th April, 1826, was printed and published by R. L. Murray. The following seven weekly issues were noted as "Printed by Mary Bent, Edited and Published by R. L. Murray." In the issue dated 2nd June, A. Bent again assumed responsibility.

Note 53, page 191.

Improper conduct in a recent trial.

The complaint made by archdeacon Scott against the judicial conduct of judge Stephen was fully reported by Governor Darling in his despatch dated 24th May, 1827 (*see* post page 318 *et seq.*).

The reference, at the end of the paragraph to "my friend, Your Counsellor," was to James Stephen, the son of judge Stephen's brother James. James Stephen, the younger (*see* note 150), subsequently became professor of modern history at Cambridge, and received the honors of K.C.B. and P.C. Judge Stephen's first appointment in the colony was as commissioner of the courts of request (*see* Earl Bathurst's despatch No. 4 of 1824, page 197, volume XI).

Note 54, page 193.

The Papers.

The reference was to the despatch dated 31st May, 1826, with its enclosures (*see* page 340, volume XII).

Note 55, page 193.

A Brother of Sir Edward Knatchbull's.

This convict, named John Knatchbull, had been transported for picking pockets in Vauxhall gardens, London. He was subsequently convicted of forgery in the colony and transported to Norfolk island. After serving a sentence there, he was released on a ticket of leave, and obtained command

of a small coastal trader. Whilst thus employed in the year 1844, he murdered a widow named Mrs. Jamieson, who kept a small shop in Margaret-place, Sydney. This was one of the most atrocious crimes in the early history of the colony. Knatchbull was tried before Sir W. Burton and defended by Robert Lowe, afterwards viscount Sherbrooke. He was convicted, and executed on the 13th of January, 1845.

Note 56, pages 196, 197, and 198.

The Letter.

This despatch was dated 2nd April, 1826 (*see* page 223, volume XII). It was received in the colony *per* the ship *John* on the 23rd of September, 1827.

Note 57, page 206.

Also pages 210 and 263.

This subject . . . in the Australian of this morning.

The reference to the pronouncement of judge Stephen was as follows:—

"It would seem that the words which fall from our Judges of the Supreme Court, when on the Bench, attract the notice of 'the Authorities,' and are deemed by His Excellency to come within the sweep of his cognizance.

"Our readers may remember that some motions were recently made to the Supreme Court, for Writs of *Habeas Corpus*, as a preparatory step to the release of several men, in whose detention in Gaol, subsequently to their apprehension, a great deal of irregularity had occurred. Circumstances were shewn to the Court, making out a very strong case of illegal imprisonment, and Mr. Justice Stephen, who happened to preside when the men were discharged, and who had previously an opportunity of knowing that the Chief Justice concurred with him in opinion as to the irregularity of the proceedings, and to the illegality of the imprisonment, expressed himself in a very constitutional manner, and made a few appropriate remarks which were much called for, from what appeared before the Court. The men who were brought up under the Writs had been taken up on a charge of Cattle Stealing on the unsupported information of a man in gaol for the same offence, and had been kept in custody five or six weeks, merely on the authority of an apprehending warrant; and during that period, had neither undergone any examination before a Magistrate, nor received intimation whether investigation of any sort was to take place, or ulterior proceedings gone on with. Any man who values English liberty, or who understands to what extent English law was violated in the persons of these men, could not but feel strongly, however he might express himself. Mr. Justice Stephen delivered his sentiments like a British Judge: had he said less he would have been justly chargeable with a dereliction of duty, and have laid himself open to the suspicion of being no lover of the laws of his country, or else of labouring under undue apprehensions and spurious fear.

"What Mr. Stephen said, was reported in a public Newspaper, and no sooner did this catch the eye of his Excellency, when forsooth the Colonial Secretary was commanded to write to him, to Mr. Stephen—a Judge—a British Judge—on the Bench, to know if he Mr. Stephen, a Judge sitting on the Bench, had made use of the expressions imputed to him! His Excellency required this information of Mr. Stephen! His Excellency, through the Colonial Secretary, demanded this explanation of the judicial conduct of one of our Judges of the Supreme Court. Mr. Justice Stephen replied to this unconstitutional letter. He replied in terms which must have been anticipated by persons of common understanding, and if it had been recollected

how the same Judge had treated a similar letter. On a former occasion it had pleased His Excellency to order an epistle to be penned to Mr. Stephen, calling upon him to inform his Excellency, if, when on the Bench, he had used the words set down in the epistle. To this then novel request he replied that he did not recollect, but if he could bring to mind what he had said he should decline giving the information sought; and he delicately intimated that he was not accountable to his Excellency for his conduct on the Bench. When the second mandate reached him, our Judge acted respectfully towards the Governor, with a dignity worthy his station, and uncompromisingly towards the Public. Mr. Stephen stated that he had referred to the words in the Newspaper, and that they were not, he believed, very accurately reported. He complained however that he should a second time be called upon to explain what he had said in his judicial capacity, and protested against all further interference, and requested that the letter which had been sent to him by command of his Excellency, together with the answer he had written, might be forwarded to Lord Bathurst's Office, in order, we suppose, that it might be seen in England, to what a wretched state of submission and vassalage it was sought to reduce a British Judge and the Courts of Judicature.

"Our late King, the Governor must know, on a memorable occasion, when giving the royal assent to a Bill which had been introduced into Parliament at his earnest recommendation, and which sealed the dignity and independence of the Judges of the Superior Courts, was pleased to observe that '*he looked upon the Independence and uprightness of the Judges, as essential to the impartial administration of Justice, as one of the best securities of the rights and liberties of his subjects, and as most conducive to the honor of the Crown.*' By General Darling this seems to be regarded a highly inconvenient doctrine, and if his practice can be taken as a guide to his sentiments, he either denies the legality or the reasonableness of it; for we are not to presume him ignorant of that which is notorious to all the world, and to suppose him unconscious of the fact, that Judges owe their accountability to the British Parliament alone, and are not liable to the interference of the King himself. To be sure it may be thought that our policy is antipodal as well as ourselves, that our laws like our feet are reversed, and that the Courts are responsible to Governors, instead of Governors being responsible to the Courts. It may further be thought that that, which would be a high crime and misdemeanor in a King of England, would be justifiable in the King's Representative—that that which would be blameable in his Majesty might be meritorious in a delegate, and that that which would make a second Charles the first of our Sovereign would not be presumptuous, but propriety in a Governor; such things may be conceived, but, if so, they must be conceived under strong and strange delusions, and such inferences must be arrived at by a most extraordinary train of reasoning. General Darling evidently thinks that some different rule prevails here, from that which is in being in England; that an extension of distance creates necessarily an extension of power in 'the Authorities,' and that dominion, which is limited in England, becomes in the hands of the Representative of the King of England, as boundless as the ocean he traverses. Nay, we have often been at a loss to supply reasons for the strange notions seemingly entertained by General Darling; we have been amazed at his fearless steps, and have been forced into the belief that he either has advisers, or acts without any advice whatever.

"His Excellency never could have understood the responsibility he incurred by presuming, we must call it presuming, to investigate the conduct of a Judge on the Bench. He could not have known that the King himself

would have been impeached for such an act, or he would not have attempted an interference with our Judges in the Court, unless he vainly thought that the relative situation of a King and a Judge was widely different from the relative situation of a Governor and a Judge. We pretend not to hint at the motives which may have impelled him. Whether they be good or bad is of little consequence, they do not alter to the extent of a single shade the complexion of an unwarrantable act.

"If the letters which Mr. Justice Stephen received were written for the purpose of intimidating his Honor in the execution of his judicial duties, or with the intention of conveying to him in an indirect manner a little friendly advice, and intimating to him that his expressions were most jealously observed, and a particular note made of all he said, while administering the Law in the Supreme Court, they were equally reprehensible, and the instigator of them deserving of censure and condemnation. Such interference is unconstitutional and illegal—it is fraught with danger, and it is calculated to strike dismay into every honest mind. A King for this would be impeached before the Parliament of Great Britain, and we know not on what ground a Governor can expect exemption from penalties visitable on Majesty! Our property is not safe if our Judges are to succumb to a Governor—our lives are in jeopardy, if a Judge must humour the whim of a Governor, give utterance to words only which accord with his caprice, and stand in awe of his displeasure. Again we say, we know not what His Excellency designed, when Mr. Stephen was addressed at his bidding, and we care not what he meant whether good or evil. It behoves us to explain to him the danger to which he exposed himself, and warn him from a repetition of such unconstitutional steps."

Note 58, page 210.

A Publick Museum.

This museum formed the nucleus of the present Australian museum at Sydney. It was first known as the colonial museum, but in the year 1835 acquired its present name. It was established in the year 1828 for the collection of "birds and other subjects of natural history." The zoologist was W. Holmes; but his colonial career was a short one, as he died at Moreton bay in August, 1830.

Note 59, page 220.

The 34th, 35th, and 42nd Clauses of the Instructions.

The 34th and 35th clauses will be found on page 119, and the 42nd clause on page 121 in volume XII.

Note 60, page 234.

The fifth Section of his Majesty's Charter.

A copy of this charter will be found in a volume in series IV.

Note 61, page 234.

The order in council dated 12th July, 1820.

This order in council was in elaboration of the British statute, 59 George III, cap. cxxii, which was transmitted to Governor Macquarie with a despatch dated 4th August, 1819 (*see* page 196, volume X). The orders in council have been omitted as they are accessible elsewhere.

Note 62, page 245.

The Balance.

The failure of John Piper enables one to catch a glimpse of the higher style of living at this period. John Piper lived at Point Piper, on the property known in later days as Woollahra house, which included the whole of the point. On the 4th of June, 1827, and following days, all his personal effects were sold by auction. These included "ALL the GENUINE ELEGANT FURNITURE and other valuable Effects, consisting of sofas, lounges, chairs and tables of rosewood, inlaid with buhl, elegant sets of dining tables, claw, loo, Pembroke and dressing ditto, brilliant pier, chimney and dressing glasses, of great dimensions, in rich gilt frames, . . . elegant cut glass chandeliers . . . lofty four post, canopy, and other bedsteads, with rich hangings. . . . Splendid dinner services, breakfast and tea ditto, rich cut glass-ware, silver plate, comprising large cups and covers, hash dishes, gravy, table, and tea-spoons, four prong table and desert forks. . . . A cellar of valuable and choice wines consisting of Champagne, Claret, Madeira, Constantia, Saturn, &c., &c. A most substantial London built carriage, with double sets of harness for four horses, in the most perfect state, a capital London built curriele, with excellent harness, about thirty horses, well known for their breed and quality, six boats with sails, awning, cushions and oars, brass and iron guns, &c., &c."

Catalogues of the effects were on sale at 1s. 6d.

Note 63, page 251.

My Despatch marked "Separate" of this date.

This is another instance of the misdating of despatches. The "separate" despatch was dated 29th April (*see* page 269). The following draft of a despatch is preserved in the record office, London:—

"I do not find that any answer has been sent to your Dispatch, marked 'separate' of the 29th of April, 1827, in which you request Instructions as to the confirmation of a reserve of 10,000 Acres of Land, ordered by Your Predecessor, Sir T. Brisbane, to be made in favor of the C. Justice Mr. Forbes.

"This reserve of Land appears to have taken place in consequence (as is mentioned by Sir T. Brisbane in his Letter to the Surveyor General, dated the 7 April, 1825) of 'a Communication from the Chief Justice, stating that he intended to submit propositions to His Majesty's Ministers relative to exchanging certain Lands, etc., the property of his Mother in the Island of Bermuda, for an equivalent out of the unoccupied crown Lands in New South Wales.'

"Chief Justice Forbes has not (as far at least as I can trace in the Correspondence of this Department) brought forward any application of the above nature; and, as I have no Information before me by which I can form an opinion of the value either of the Land belonging to Mrs. Forbes at Bermuda, or of that which has been reserved at New South Wales with a view to the exchange, it would have been impossible for me, without further Enquiry, to give my consent to the arrangement. But there are many other considerations, connected with the proposed exchange of this Land, which induce me to decline acceding to it. You will, therefore, acquaint Chief Justice Forbes that it is with much regret that I feel myself compelled to refuse the confirmation to his Mother of the Reserve, which has been made in her favor.

"Any Grant, which Mr. Forbes or his Mother may be desirous of obtaining, can be only given to them as to any other Settler, in proportion to their available Capital, and the regulations respecting personal residence must be enforced in this case as in that of any other Grantee.

"I have, &c.,"

Note 64, page 252.

One of the finest and most beautiful Tracts in the Colony.

The land selected is situated in the county of Durham in the neighbourhood of the modern town of Muswellbrook, or Muscledbrook, as it was first called. Forbes did not receive a free grant of this land. On the 6th of October, 1826, Governor Darling promised him a grant of 2,560 acres at Muswellbrook, which promise was confirmed by Sir Richard Bourke by deed, dated 9th April, 1835. On the 16th of April, 1836, he received a deed of grant by purchase at 5s. per acre of 2,560 acres, which was designated as part of the reserve of 10,000 acres authorised by Sir Thomas Brisbane on the 7th of April, 1825.

Note 65, page 254.

The Regulations.

The regulations will be found on page 595, volume XII.

Note 66, page 258.

The letter of this Board.

The letter was written by W. Hill to under secretary Hay. Earl Bathurst practically copied it verbatim in writing his despatch to Governor Darling, numbered 95 and dated 1st December, 1826 (*see* page 702 *et seq.*, volume XII).

Note 68, page 268.

The three great Roads.

In the year 1827, the road to Argyle was by the old Cowpasture road to the bridge at Camden. From thence it turned south-easterly through the estates of John Macarthur (now Camden park), until the modern road from Menangle to Picton was reached. The line of this road was practically followed until the Stonequarry creek at Picton was crossed. Thence it proceeded southerly, crossing the Bargo river, until Lupton's inn was reached. The road then trended south-westerly through Bargo brush; and, passing about 2 miles to the east of the modern town of Mittagong, the range was ascended about a mile and a half to the east of the hill, now known as the Gib or Gibraltar, but called by the natives Bowrell. The road then went direct to the crossing of the Wingecarribee river at Bong Bong, and from thence virtually followed the present road *via* Moss Vale, Sutton forest, and Jumping rock to the crossing at Barber's creek, where Argyle proper was considered to commence.

The road to Bathurst, with slight deviations, followed the modern western road as far as the town of Mount Victoria. From thence, the road descended Mount York, and proceeded *via* Little Hartley and Mount Blaxland to cross the steep range, which divides the watersheds of the Cox and Fish rivers. The Fish river was crossed near the hill known as Evans' Crown. The road kept on the south side of the river, passing through Sidmouth valley, until it recrossed at O'Connell plains, and from thence continued to Bathurst.

The road to Hunter river, with slight deviations, followed the modern road to west Maitland *via* Wiseman's ferry and Wollombi.

Note 69, page 270.

In the room of the Rt. Honble. the Earl Bathurst.

Earl Bathurst had held office as secretary of state for war and the colonies since the 11th of June, 1812, a period of nearly fifteen years, and thus had vast influence in directing the destinies of Australia.

Note 70, pages 277 and 375.

A Bill.—The Act was published.

These bills were Nos. 2 and 3, 8 Geo. IV, as published in the "Public General Statutes of New South Wales."

8 Geo. IV, No. 2, was "An Act for preventing the Mischiefs arising from the printing and publishing Newspapers and Papers of a like nature by persons not known and for regulating the printing and publication of such Papers in other respects and also for restraining the Abuses arising from the publication of Blasphemous and Seditious Libels." This statute was passed on the 25th of April, 1827, and contained twenty two clauses, which provided:—

Clause 1. "From 1st May 1827 no person shall print or publish any newspaper until after the delivery of an affidavit or affirmation as hereinafter mentioned to the Colonial Secretary."

Clause 2. "Nature of affidavit or affirmation."

Clause 3. "To be renewed as occasion may require."

Clause 4. "To be made or taken in writing before the Colonial Secretary who may take such affidavit upon oath."

Clause 5. "To be sworn or affirmed and signed by every editor printer publisher and proprietor of newspapers."

Clause 6. "Under penalty of £100."

Clause 7. "To falsify an affidavit or affirmation punishable as corrupt perjury."

Clause 8. "All such affidavits and affirmations to be filed and kept in the office of the Colonial Secretary and in all proceedings civil and criminal shall be received as conclusive evidence of the truth of all such matters as are therein set forth."

Clause 9. "The true and real name addition and abode of the editor printer publisher and proprietor of every newspaper to be printed in some part thereof under penalty of £100."

Clause 10. "Evidence of the purchase of any newspaper at the house shop or office of the defendant upon trial dispensed with."

Clause 11. "Service of legal process against editors printers publishers or proprietors of newspapers regulated."

Clause 12. "The Colonial Secretary to furnish certified copy of affidavit or affirmation upon application."

Clause 13. "Such copy to be valid as evidence."

Clause 14. "From the 1st May 1827 the editor printer or publisher of every newspaper shall upon each day of publication deliver one of the newspapers so published to the Colonial Secretary or to some person to be by him appointed to receive the same.

"The Colonial Secretary to pay the ordinary price of such papers.

"Penalty for neglect to deliver every such newspaper £100.

"Such newspapers may be required from the Colonial Secretary to produce in evidence in any proceeding civil or criminal within two years from publication."

Clause 15. "Defendants in any action for libellous or slanderous matter in any newspaper may not plead or demur to any Bill filed in the Supreme Court for the discovery of the names of any persons concerned in the property of such newspapers."

Clause 16. "From the 1st May 1827 recognizances with sureties to be entered into by the editors printers or publishers of newspapers.

"Penalty for omission £20."

Clause 17. "Sureties may withdraw upon giving twenty days notice in writing

"No other newspaper to be printed or published until a new recognizance with sureties be entered into.

"Penalty £20."

Clause 18. "In case of the insolvency of sureties a new recognizance with sufficient sureties to be entered into.

"Penalty for printing or publishing without entering into a new recognizance £20."

Clause 19. "Certificates of recognizances to be sent to the Colonial Secretary."

Clause 20. "Persons convicted of blasphemous or seditious libels how punishable."

Clause 21. "Persons sentenced to banishment not departing from the Colony within thirty days may be sent away by the Governor."

Clause 22. "Fines penalties and forfeitures how recoverable.

"Their appropriation."

8 Geo. IV, No. 3, was "An Act for imposing a Duty upon all Newspapers and Papers of a like nature printed to be dispersed and made public." This statute was passed on the 3rd of May, 1827, and contained nine clauses, which provided:—

Clause 1. "From the 1st June 1827 four-pence sterling to be paid to His Majesty on every Newspaper printed in New South Wales."

Clause 2. "The Collector of Internal Revenue to have the care and management of such Duties and to provide stamps.

"Also to employ persons to mark and stamp such Newspapers."

Clause 3. "Every sheet or other piece of paper upon which a Newspaper is intended to be printed shall be marked and stamped the Duty being first paid."

Clause 4. "To forge or counterfeit any plate stamp or die used in pursuance of this Act or to utter sell or expose to sale any Paper with the impression of such counterfeit punishable on conviction by transportation for fourteen years."

Clause 5. "Penalty for printing any Newspaper upon paper not duly stamped £20."

Clause 6. "Any person who shall knowingly receive and keep a Newspaper not duly stamped to forfeit £20."

Clause 7. "Persons printing Newspapers upon unstamped paper shall be liable to pay such sum as would have accrued for Duty."

Clause 8. "A separate account to be kept of the Duties hereby granted which shall be applied to the payment of the costs of printing the Public Acts and Ordinances and the surplus if any to defray the expenses of the Colonial Police."

Clause 9. "Fines penalties and forfeitures how leviable. And their appropriation."

This act was published in full in the issue of the *Sydney Gazette* dated 4th May, 1827.

The announcement of these two bills caused much opposition from those interested in the press. The *Monitor* newspaper ceased publication in its ordinary form on the 11th of May, and, in an endeavour to avoid the operation of the law, commenced publication in the form of a magazine under the title of "The Monitor Magazine." The first issue (vol. I, No. 1) was dated 18 May, 1827, and was sold for eighteen pence. It was an octavo-pamphlet of 48 pages, stitched together. The second issue was dated seven days later, and was of similar size. The history of this short-lived attempt at evasion is explained by the following extracts from the second issue:—

"*George Street, Sydney, May 21, 1827.*—SIR,—It has been officially communicated to me by the Government, that you have neglected to deliver at the office of the Colonial Secretary of the Colony, or to transmit to him a copy of your last publication of the *Monitor*, which by the terms of the act of the Governor in Council, No. 2, ought to have been done signed by you, being the Proprietor, Editor, Printer, and Publisher of that paper on the day of the publication thereof.

"I have been directed to proceed against you for recovery of the penalty you have subjected yourself to by such omission, but, should it have occurred from any accidental neglect on your part, I shall not do so, unless you fail to give me some explanation whether it has been done intentionally or inadvertently, and in the latter event only on your furnishing the Copy as required without delay.

"*I am, Sir, your most obedient Servant,*

"W. H. MOORE.

"To E. S. Hall, Esq., Editor of the *Monitor* Newspaper.

"We waited upon Mr. Moore on receiving the above, stating that our Magazine serving the purpose of a Newspaper was not a *Paper* but a *Book*, and of that species of Books called *Magazines*, consequently it did not fall within the operation of the new Act."

"We shall next week descant upon the English laws which regulate the publication of newspapers and books, under which title Books, the law includes papers SEWED STITCHED OR BOUND TOGETHER, whether small books or large, with or without covers, patent bound or simply sewed. In the mean time, as a little alarm has sprung up in the public mind since they have been apprised of the official notice sent us by Mr. W. H. Moore, lest after all our Magazine should prove STAMP-able, we do intreat our friends to cast away all uneasiness on this head. For not only do the Acts of Council studiously exclude all BOOKS, whether pamphlets or magazines, by expressing very literally, that nothing but a sheet, or other piece of paper, shall be stamped, but the English Acts from which they are derived, expressly lay it down, that all Magazines or other bound periodicals above certain given dimensions (the said given dimensions being considerably UNDER the size of our Magazine) shall NOT be considered newspapers, nor consequently liable to the News Stamp."

"WE STOP THE PRESS TO ANNOUNCE that it is reported *The Australian* intends publishing *with the Stamp*. This seems to us very strange. WE have had the honour to moot the question, by having declined to send a copy of the first number of our Magazine to the Colonial Secretary, signed with our name. The question cannot be brought before the Court more completely by any further publications. Therefore until the decision of the Chief Justice be obtained, we shall not publish any more *Magazines*. We hope His Honor will be induced to facilitate the bringing on of the question. If the question

be delayed, we must follow, in the mean time, the example of *The Gazette* and *The Australian*, in whatever course they may think it prudent to pursue."

The operation of the statute No. 3 was suspended by government notice dated 31st May, 1827 (*see* page 392), and the *Monitor* resumed publication as a newspaper on the 1st of June.

Note 71, page 277.

Also pages 278 and 279.

A recent Trial.

This was the trial of R. Wardell for a libel, published in the *Australian* newspaper in October, 1826 (*see* pages 670 and 671, volume XII). The action was brought by Saxe Bannister. After the conclusion of the evidence for the plaintiff, the defendant submitted that no evidence of publication had been tendered, and therefore claimed that Bannister should be nonsuited. Judge Stephen, who presided, ruled that the defendant had been partly proved to be the editor of the paper, but that no evidence had been given of publishing, or that the paper had been published and sold by the defendant. Thereupon, a verdict was entered for the defendant.

Note 72, page 287.

My despatch No. 39.

The despatch was dated 11th March, 1827 (*see* page 149 *et seq.*).

Note 73, page 290.

Also page 292.

The clauses hereto annexed.

The clauses will be found on page 285 *et seq.*

Note 74, page 290.

The 24th section of the act.

This section will be found in note 44, volume XI.

Note 75, page 291.

The 29th section.

This section was as follows:—

"And be it further enacted, That no Law or Ordinance shall by the said Governor or Acting Governor be laid before the said Council for their Advice or Approbation, or be passed into a Law, unless a Copy thereof shall have been first laid before the Chief Justice of the Supreme Court of *New South Wales*, and unless such Chief Justice shall have transmitted to the said Governor or Acting Governor a Certificate under the Hand of such Chief Justice, that such proposed Law is not repugnant to the Laws of *England*, but is consistent with such Laws, so far as the Circumstances of the said Colony will admit."

Note 76, page 297.

Also pages 562 and 615.

The occurrences at Emu Plains.

Sir Thomas Brisbane transmitted a full report, dated 10th September, 1825, on the alleged immorality practised amongst the convicts at Emu plains (*see* page 812 *et seq.*, volume XI).

Note 77, page 301.

The events.

Samuel Chipp, John Ridgway and Edward Colthurst were tried on the 20th September, 1826, for the wilful murder of a black boy at Port Stephens (see page 632, volume XII). On the 23rd of September, the executive council decided that Chipp should suffer death at Port Stephens, and that Ridgway and Colthurst should be transported for the term of their natural lives; at the same time, it was decided to offer a reward for the apprehension of Thomas Stanley, who was a principal in the murder. The execution of Chipp was delayed, and in the meantime Stanley was arrested, tried, and condemned to death. On the 19th of March, 1827, their case was considered by the executive council, and it was decided that both should suffer death at Port Stephens. Owing to delay in fulfilling this decision, the council on the 26th of April decided that both prisoners should be removed to the hulk to await the decision of H.M. the King.

Note 78, page 302.

Port Essington.

When James Gordon Bremer was sent from England in the year 1824 to found a settlement in north Australia, Port Essington was suggested as one of the sites for selection. Accordingly, on the 20th of September, the vessels carrying the expedition anchored in the port, and took possession of the "north coast of New Holland." Bremer described the port as "one of the most noble and beautiful pieces of water that can be imagined, having a moderate depth, and a capability of containing a whole navy in perfect security." Three days were spent without success in searching for a water supply, suitable for the proposed settlement. Accordingly, Bremer decided against the locality, and on the 23rd sailed from Port Essington for Apsley strait, where he founded the settlement on Melville island on the 30th of September, 1824.

Note 79, page 308.

A Letter.

A copy of this letter will be found on page 267.

Note 80, page 317.

Also pages 400 and 413.

The Trial.

Nathaniel Lowe, lieutenant in the 40th regiment, was tried on the 18th of May, 1827, in the supreme court before the chief justice, F. Forbes, and judge Stephen. He was arraigned on two accounts, first, for the wilful murder of an aboriginal named Jackey Jackey on the 1st of August, 1826, and secondly, for the wilful murder of an aboriginal, name unknown. The acting attorney-general prosecuted, and Dr. Wardell and W. C. Wentworth appeared for the defence. When the prisoner was asked to plead, Dr. Wardell raised a point as to the jurisdiction of the court. He argued that a native could not be tried by the court, "first because he could not comprehend the form of trial, and secondly because, even if he did, he could not in that court have such a trial, as by the law of England he was entitled to, namely, by a jury composed half of British subjects and half of natives." He contended, "that nothing could be fairer, with regard to any people living in a state of nature, than to

punish them in the very way in which they themselves would punish others falling into their hands." After quoting as authorities Grotius, Puffendorf, Lord Bacon, and Barbeyac, he urged "that the court had no jurisdiction to try one, who had committed no offence according to the law of nature; but who had put himself amongst a tribe of savages, had submitted to their laws and usages, and only did that, whilst among them, which they might have done to him; and also, whether the act was lawful or not, it was still without the jurisdiction of the court, because there was not fair measure of punishment on both sides, which was contemplated by the British law."

The court over-ruled the objection, the chief justice holding that the sovereignty of his Majesty over the country was established, and by act of parliament a particular mode of trial was prescribed.

The acting attorney-general then stated the case for the prosecution, and called three witnesses. Thomas Farnham, the constable, and William Salisbury gave evidence as to the actual shooting of the native, and William Constantine as to the burial of the body. The evidence of Farnham, however, was nullified by the production in court of his previous deposition, in which he denied all knowledge of the episode.

Witnesses were called for the defence, who contradicted the evidence already given, and stated they would not believe the previous witnesses, even on their oath.

The chief justice summed up the case, stating that the verdict depended entirely on the credibility of the witnesses.

The jury, after retiring for a few minutes, returned a verdict of not guilty.

Note 81, pages 318 and 319.

The "Australian" of Yesterday.

This issue contained a leader of two columns. In it the editor denied having seen the statement of archdeacon Scott, but this seems hardly credible, as the remarks of the archdeacon are practically discussed *seriatim*. The article was condemnatory of the archdeacon and laudatory of judge Stephen.

Note 82, page 358.

The decision of the Supreme Court quashing the proceedings of the Magistrates.

The proceedings and judgment in this suit will be found on page 286 *et seq.*, volume XII.

Note 83, page 359.

The Statute 2 Geo. 2, Chap. 36.

This statute was an "Act for the better Regulation and Government of Seamen in the Merchant Service."

Note 84, page 362.

A Mine.

The proposal for a mine or tunnel was adopted (*see* note 167, volume XI).

Note 85, pages 364 and 365.

My Report.—1st Report.

The first report by John Busby was dated 28th June, 1825, in the copy transmitted by Sir Thomas Brisbane (*see* page 682, volume XI).

Note 86, page 367.

The New Gaol.

The reference was to that portion of the gaol buildings which lies immediately behind the criminal court at Darlinghurst.

Note 87, page 372.

Your despatch marked "Separate."

This despatch was dated 6th September, 1826 (*see* page 543, volume XII).

Note 88, page 375.

Also page 378.

The Australian of the 25th Instant.

This issue of the newspaper contained a leader nearly two columns in length on the "Stamp Act." The similarity of the criticism to the opinions of the chief justice may be judged from the following:—

"The Council, it must be known, have only the power of assenting to, or dissenting from any and every measure laid before them. First, the Governor 'initiates,' next the Chief Justice 'certifies,' and lastly the Council 'pass' the proposed enactment, which thus becomes a law. If the Council make an alteration, it is not the Law which the Governor initiated—it is not the Law which the Chief Justice 'certified,' and it becomes thus vitiated in the hands of our Legislators. If it were left for the Members of the Council to insert the amount of Stamp Duty, their law is not worth the paper it blackens. . . . It is possible that the Chief Justice may . . . have certified that a law imposing a Stamp Duty of a halfpenny or a penny on Newspapers is not repugnant to the Laws of England. A specific sum must have been named in the proposed Act; else the Chief Justice might have incurred the risk of certifying that a Stamp Duty of four thousand, instead of four pence, is not repugnant to the Law of England."

Note 89, page 387.

My Despatch, No. 48.—No. 39.

These despatches were dated 8th April, 1827 (*see* page 242), and 20th July, 1826 (*see* page 366, volume XII).

Note 90, page 392.

Chief Justice Forbes to Governor Darling.

The marginal notes in the original of this letter refer to the numbered paragraphs in enclosure No. 3.

Note 91, page 399.

His letter of the 30th of May inst.

This letter will be found on page 385.

Note 92, page 399.

The Inquiry.

The proceedings at the first inquiry will be found on page 625 *et seq.*, volume XII.

Note 93, page 401.

The manner in which he thought proper to head the depositions.

This magisterial statement will be found on page 407.

Note 94, page 407.

The Magistrates.

In addition to E. C. Close, F. Allman and Robert Scott sat as magistrates at the first inquiry.

Note 96, page 413.

The representation against Mr. Justice Stephen.

The statement made by archdeacon Scott will be found on page 321 *et seq.*

Note 97, page 414.

Also pages 415 and 416.

Instructions brought out for the first time by your Excellency.

It is difficult to understand these references. A despatch, dated 1st January, 1825 (*see* page 434 *et seq.*, volume XI), was written by Earl Bathurst to Sir Thomas Brisbane, and acknowledged by the latter in a despatch dated 30th June, 1825. A draft of the charter of incorporation for the management of church and school estates is recorded as an enclosure to this despatch (*see* page 444 *et seq.*, volume XI). It is possible that this enclosure may have been omitted from the original or duplicate copies of the despatch.

Note 98, page 422.

The Instructions conveyed to Sir Thomas Brisbane.

The instructions were transmitted to Governor Darling in a despatch dated 11th September, 1825 (*see* page 58, volume XII).

Note 100, page 426.

Dispatch of the 10th of April last.

The despatch dated 5th April will be found on page 234. The original of this despatch was dated 5th April, the duplicate original 10th April, hence the confusion in reference.

Note 101, page 429.

A case of Libel.

This was the trial for the libel contained in the issue of the *Australian* newspaper dated 20th January, 1827 (*see* note 113).

Note 103, pages 443 and 447.

Also page 707.

The Sydney Gazette.—Colonial Newspaper.

The "prominent part" taken by Dr. H. G. Douglass consisted in seconding the motion of thanks to the sheriff, John Mackaness, for presiding at the meeting on the 26th of January, 1827. In the newspaper, it was reported

that, "Dr. Douglass rose to second the motion, and observed that, though a Civil Officer, he did not consider himself out of order in rising to second a motion like the last. He did not think himself second to any man in admiration of the Laws and Constitution of the Country, and he joined heart and soul in the Prayer of the Petition. The People of this Colony were a loyal and industrious People, who obeyed the Laws and Authorities of the Country, and only asked in return to live under the protection of those Laws."

The participation of John Mackaness consisted in presiding, and the reference in the press to him was as follows:—

"The Sheriff, having taken the chair, stated that, at the requisition of twenty four Gentlemen of considerable talent and large property, he had the honour of convening the present Meeting, to consider whether Petitions should not be forwarded to HIS MAJESTY, and both Houses of Parliament, on the two great questions of Trial by Jury and Taxation by Representation. He requested that every observation, which should be made, would be heard with attention, calmness, and good humour; and concluded by hoping that some Gentleman present would come forward and address the Meeting on the subject for which they were assembled."

And on a motion of thanks being moved, it is reported that:—

"The Sheriff then returned thanks, and dissolved the Meeting."

These are the reports to which Viscount Goderich referred.

Note 104, page 446.

Also pages 451 and 485.

The terms.

The "terms" will be found on page 595, volume XII.

Note 105, pages 447 and 802.

Mr. Dowling.

James Dowling was born in London on the 25th of November, 1787. He was educated at St. Paul's school, and became a newspaper reporter in the houses of parliament at Westminster. He then studied law, and was called to the bar at the Middle Temple in the year 1815. He engaged in private practice, and edited several legal works; but, finding progress slow in London, he sought and obtained his colonial appointment. His commission as third judge was dated 6th August, 1827. He arrived in the colony per the ship *Hoogley* in February, 1828, and on the 25th of that month he was sworn into office by Governor Darling. His colonial career can be traced in subsequent volumes.

Note 106, page 450.

Your private Letter of the 16th of February last.

In the copy available, this letter was dated 10th February, 1827 (see page 105).

Note 107, page 450.

The Western Coast of New Holland.

This is an error by Viscount Goderich. Western port is situated on the southern coast of the state of Victoria on the continent of Australia. He was probably misled by the name Western port, which was so called by George Bass in 1798 "from its relative situation to every other known

harbour on the coast." A somewhat similar loose style of nomenclature is used in Australia at the present day; residents of Sydney speak of the "south coast," referring to the Mlawarra district, and of the "north coast," referring to the districts about the Clarence, Richmond, and other rivers, although these districts lie on the east coast of the state of New South Wales and of Australia.

Note 108, page 451.

Mr. Howell.

This is an error in the original. The reference is to William Hilton Howell (*see* note 151, volume XI).

Note 109, page 451.

Letters of Denization.

In consequence of the instructions contained in this despatch, the act of council 9 Geo. IV, No. 6, was passed on the 3rd of July, 1828, "for enabling the Governor or Acting Governor of New South Wales to grant Letters of Denization to such Foreigners as may arrive in the Colony with a recommendation to that effect from His Majesty's Principal Secretary of State for the Colonies." Prior to this, in July and August, 1825, two special acts of council had been passed to naturalize Timothy Goodwin Pitman and Prosper de Mestre, who were citizens of the United States of America.

Note 110, page 453.

Mr. W. Gregory.

W. Gregory was the secretary at Dublin castle.

Note 111, page 457.

Memorandum.

A copy of this memorandum will be found on page 454 *et seq.*, volume XI.

Note 112, page 465.

Also page 515.

Under Secretary Hay to Governor Darling.

The originals of these two letters are endorsed as received on the 1st of January and 1st of August, 1828, respectively.

Note 113, page 477.

Also page 483.

In the "Australian" Newspaper of the 20th January last.

The libel was contained in a sub-leader, commenting on a trial in the court of quarter sessions before William Carter. At this trial a female prisoner was indicted for having received a quantity of Irish linen, stolen from Government house, the indictment stating that the principal felon was unknown. Evidence was given of the sale of the linen by the prisoner. Colonel Dumaresq was then examined, and stated that a person had been arrested on suspicion of having stolen the goods. William Carter, as chairman, is then reported to have stated, "Gentlemen of the Jury, the prisoner is indicted for receiving property stolen by some person or persons unknown—whereas it

appears in evidence that a man is now in custody on suspicion of being the principal in committing the robbery—you are therefore bound to acquit her!!!" The prisoner was acquitted accordingly.

On this, the comments, which are typical of the style of writing in the *Australian*, were as follows:—

"Yes, amid the ridicule and unsuppressed laughter of all present was this charge to the Jury delivered, and this verdict by twelve good men and true found. For the first time has it been discovered, and the discoverer is the Learned Chairman of the Court of Quarter Sessions, that apprehension on a charge is equivalent to a conviction, that suspicion of crime amounts to legal proofs of guilt; and the Chairman of the Court of Quarter Sessions is the man for disposing of and settling criminal business; to him belongs the undivided merit of introducing a new code, and a new criterion of guilt; the wearisome forms of Courts and the farce of assembling Juries may now be dispensed with, for the Chairman of the Court of Quarter Sessions can determine of himself all cases by intuition; and the tediousness and expense of trying a prisoner is supererogatory, for a man is KNOWN to be the thief as soon as he gets into the fangs of the Police; discharge or commitment makes no difference—conviction or acquittal throws no new light upon the subject, and such is the puissant influence of a constable's staff that its magic touch works wonders greater than the far famed lamp of Aladdin, for it converts the SUSPECTED into the GUILTY, the SUPPOSED offender into the KNOWN culprit!

"Try the Learned Chairman by his own law and by his own test of guilt. Suppose the possession of legal skill were 'felony without benefit of Clergy,' what would he say, if he were taken up on suspicion of being a lawyer, because he was detected sitting in the Chair at Quarter Sessions. Would he not be the first to complain of a violation of Magna Charta in his august person! Would he not most lustily denounce such an abuse of the law! Would he not be stricken dumb with astonishment, at finding an extrajudicial opinion of guilt have all the force of a verdict of a Jury, and at being condemned as guilty when he could furnish incontrovertible proofs of his innocence! When he could convince the most incredulous that he was a perfect novice, if he could claim perfection at all; and that, if he had aspired to the humble office of Chairman at the Court of Quarter Sessions under the plea of being learned in the Law, he had aspired to, and obtained it under false pretences. Or if it were a misdemeanor to receive a legal opinion, knowing it to be such, would not the Chairman at the Court of Quarter Sessions be outrageously violent at hearing, that because he was in custody on the charge of being the principal felon, that is, on the charge of being a lawyer, and of concocting the aforesaid legal opinion—the alleged Receiver was acquitted—and acquitted too, at the very moment that he was discharged, for want of evidence to prove him a lawyer—or though he were able, if not discharged, easily and satisfactorily to have proved that he *could* not give a legal opinion. Would he not, we repeat, be most insufferably obstreperous, if he were thus incidentally bereaved of his character, and stigmatised as being known to be the Principal Felon; because he was suspected, and unjustly suspected, of being the principal!

"How will the Chairman, after violating common sense so palpably, and after exposing himself to the contempt of a crowded Court, and being through ignorance accessory to the escape of a delinquent, how will he meet the public? If he possess a candid mind, and have integrity of principle, how can he conscientiously receive payment from the public, whose cause his negligence has betrayed—his empiricism has overturned? It is worse than empiricism, for want of skill in him is not supplied by experience. Nor does

he manifest that patience, that caution, and that deliberation, which in a moderately informed man might prove the passport to correctness—the safeguard from error. Lest the by-standers should detect his want of legal tact, or legal research, or legal depth (at least we can only attribute his impetuous haste to decide legal points to this feeling), he dashes at once into the thickets of the law, slashes down the brakes and briers with which it is surrounded, and pronounces his *dictum* without hesitation.

“No one can accuse him of indecision. While lawyers would be arguing or deliberating, he is deciding—while judges would be at the threshold of an argument, he enters the sacred fane, passes out again, shuts the door, puts the key in his pocket, and walks off! There’s the Lord Chancellor of England weighing and examining points and subtleties—dubitating and deliberating before he approaches the decision—and he is reckoned one of the greatest, if not the greatest lawyer of the age. But the Chairman of the Court of Quarter Sessions never fluctuates, never reflects, or if he do, his powers of reflection are conducted with greater celerity than those of other people; and before most folks well know what one subject is, he is ready for another. But we said that the Lord Chancellor of England is about the greatest lawyer of the age, what then is our learned Chairman? Greater than the greatest? or—

“If Mr. Chairman were not a paid Chairman—if he were not hired to do the legal jobs, we should not be justified in holding out his errors so forcibly to public notice and public reprobation. We should feel it our duty to repress the indignation of the higher, and the scorn and derision of the lower classes of society—all of whom not only are able to, but do detect his glaring faults and his unpardonable absurdities. Where pretensions are small, criticism should be tender; but when men make great pretensions, and are paid on the strength of those great pretensions, it would be a dereliction of duty in us to pass over opportunities of shewing that the public are deceived. The error committed the other day is unpardonable. It was hurried into and committed in an instant. We declare it was hardly the work of a moment. A prudent man—a man who had a spark of modesty, or who did not wish to shew off by off-hand opinions and decisions, would at least have said to the advocate of the prisoner, ‘Shew me your authorities; what cases have you to make it appear that a person in custody on suspicion of being a principal felon can in contemplation of law or reason be taken to be *known* as the principal. . . . If you can shew me cases which prove that an Indictment against a Receiver is vitiated by the discovery that A., B., or C. is in custody on *suspicion* of being the Thief, no matter what that suspicion may be—whether an absurd or a reasonable suspicion, it appearing that he is only apprehended and not committed—then I shall be bound, perhaps, to acquit the prisoner; but if you can’t shew me such authorities, still, for the sake of the prisoner, I have no objection to reserve the point.’

“If the Chairman had talked after this fashion, he would have imitated the practice of a lawyer—he would have acted like a man who did not affect more wisdom than his head contained; at all events, he would not have acted like one who decided according to the impulse of the moment, or like one whose movements were accelerated by the fear that spectators would not give him credit for being a clever fellow, or for possessing more wits than he really had. We feel that on this occurrence we cannot be too severe—that we cannot say too much in exposure of a total abandonment of the guides of reason and law and plain sense. It could not have happened with one of our unpaid Magistrates. For whoever had been in the Chair, except the Magistrate who then presided, he would have had learning enough (for the learning which he brought into the world with him would have sufficed)

either to have given an opposite decision, or at least to have reserved the point till advice could have been taken. We have known Mr. Stephen do this; and surely Mr. Carter would not have derogated from the dignity of a Justice of the Peace, had he become the humble imitator of his predecessor."

(In the next paragraph the cautiousness practised by the judges of the supreme court was highly commended.)

"If the Chairman had followed our advice—advice but lately given, and given when we said it was necessary to keep a superintending eye over his little—little Court—he would have escaped the dilemma with which he is now overwhelmed. But surely it has convinced him of his incapacity to discharge the duties for which he is paid, and surely he must see that he is bound in honor to retire from a situation which he has not abilities to fill.

"If we were to concede to the Chairman that there is a remote possibility of his decision being right—how has he supported the trust reposed in him—how has he upheld the laws and inspired the multitude with a reverence for them? How has he satisfied the prosecutor that he has had justice at his hands? How has he convinced the people that *lex est summa ratio*, that law is the perfection of reason, when every one left the Court satisfied that, if HE were right, law was the perfection of folly! It may be enough for Mr. Chairman to exclaim *sic lex est*, and leave his hearers to discover why it is the law; but it will not content us to tell him that *his* Law is *not* the Law of the Land; we will give him reasons why we tell him so."

The article concluded by quoting and discussing the various statutes affecting receivers.

Note 114, page 481.

Also page 484.

In the Australian of the 29th June, 1827.

The report on the proceedings in the supreme court on the 26th of June, in the case of *Rex v. Wardell*, commenced as follows:—

"The Court was occupied some hours this day, with arguments on a motion made to the Court on a preceding day by this defendant. The motion was not of a very specific nature, but it had arisen out of some proceedings instituted by the Acting Attorney General in cases of alleged libel. The Acting Attorney General, it appeared from the defendant's statement, had filed three Informations and had issued to the defendant such subpoenas upon them as were used by the King's Coroner, and further had taken these subpoenas out of the Supreme Court without a *præcipe*, without leave of the Court, and without entering a minute in the Supreme Court office, and had filed Informations which had not the necessary and essential conclusions which Informations ought to have, whether they proceeded from the office of Coroner or were filed *ex officio*. It also appeared that two of these Informations were filed on behalf of two private individuals, namely, Mr. Carter and Mr. Pedder. The defendant contended that, as to two of the Informations, the process on them must be quashed, as the provisions of the Statute of William and Mary had not been complied with; and that, as to the third, no process could issue for want of the prayer to the Court at the conclusion of the Informations."

R. Wardell then entered into a lengthy argument as to the powers and duties of the attorney general in originating proceedings, and the validity of the informations filed. At the conclusion he submitted whether any proceedings could be taken on these informations. After hearing argument by W. H. Moore, the acting attorney-general, the chief justice discussed the right of the attorney-general to prosecute for libel (*see A* in the letter of

James Norton). Later in his observations (C) he stated, "I cannot prevent the Attorney-General from proceeding *ex officio*, at the same time I tell him what is due to the Court." He then defined the power of the attorney-general (*see* B), and "with these remarks, we dismiss the present application."

Note 115, page 488.

Also page 490.

The Australian Newspaper.

In this issue, the leader of more than two columns contained a drastic criticism of the government for issuing the order on page 488. The second and third paragraphs may serve as an example:—

"We lament to see a Government displaying so much ignorance as this Notice betrays, and we feel sincere compassion for the weakness which is so readily seduced into error; but, while we extend our pity to the Authorities, at witnessing the awkward dilemmas in which they unwittingly place themselves, we shall strenuously oppose the accomplishment of the purposes of the Notice, and raise our powerful arm to prevent a meditated encroachment on the rights of the people, and rescue the Government from the consequences of intentionally or unintentionally, as the case may be, being guilty of a usurpation of power.

"We crave the particular and minute attention of our Readers to every line of this non-descript, nay, even under this Government, the unprecedented Notice. It is worth any man's while to study the principles on which it is built—to look at the havoc it makes of Law and the Constitution, and of Constitutional Law. The absurdities on the face of it are enough to startle the man even, who never thinks, and satisfy the most cursory observer, as well as the erudite understanding, that this Government Notice cannot be consonant with right reason, and cannot stand the test of examination, IF an Act of Parliament of Great Britain be worth the paper on which it happens to be engrossed."

Note 116, page 493.

Communication of the 27th Ultimo.

This letter will be found on page 468.

Note 117, page 503.

10th August, 1827.

Another copy of this letter was dated — September.

Note 118, page 505.

The titles of acts.

These were:—

No. 1.—An Act for the regulation of the Hulk or Floating Prison in Sydney Harbour.

No. 2.—An Act for repealing the Laws now in force relative to the licensing and regulating of Public-houses and for the better regulating the granting of Licenses for the sale of Ale, Beer, Wine, Spirits, and other Liquors in New South Wales in future.

Nos. 3, 4, and 5 were the acts of council quoted on pages 454, 565, and 513, volume XII.

Note 119, page 508.

In the room of The Lord Viscount Goderich.

Frederick John Robinson had been chancellor of the exchequer in the administration of the earl of Liverpool. Towards the end of the year 1826, he had expressed a desire to hold a less onerous office. Accordingly, when Canning became prime minister, he created Robinson Viscount Goderich on the 28th of April, 1827, and appointed him secretary of state for war and the colonies two days later. His tenure of this office lasted four months.

Note 120, page 511.

The particular Office mentioned in the fourth Section.

The fourth section provided for the trial of crimes and misdemeanors, and the "office" was mentioned in the beginning of the clause as follows:—

"And be it further enacted, That all Crimes, Misdemeanors and Offences cognizable in the said Courts respectively shall be prosecuted by Information in the Name of His Majesty's Attorney General or other Officer duly appointed for such Purpose by the Governor or Acting Governor aforesaid."

Note 121, page 516.

The old Seal.

This was the second seal of the colony. The first seal was received by Governor Phillip in September, 1791, and the second by Governor Macquarie in August, 1817 (*see* note 97, volume IX). On the death of King George III, a warrant was issued to continue the use of the second seal (*see* page 209, volume X) until a new seal was prepared.

Note 122, page 523.

Also page 524.

Isle of Stradbroke.

Henry John Rous was the second son of John Rous, first earl of Stradbroke. This explains the reference in Governor Darling's order.

Note 123, pages 529 and 795.

Raffles Bay.

Raffles bay had been discovered by lieutenant P. P. King in the brig *Mermaid* during the month of April, 1818. It was named in honour of Sir Stamford Raffles. When James Stirling was sent to found a new settlement, he first selected a site on Croker's island, but this was abandoned on the 15th of June, 1827, and he removed to Raffles bay two days later. On the 18th of June, possession was taken in his Majesty's name, and the settlement was called Fort Wellington "in compliment to the day, so auspicious to the British arms." Stirling described Raffles bay as "a safe and convenient anchorage for vessels of any description at all seasons of the year; it is approachable with ease and free from dangers. It offers abundance of excellent fresh water for the use of the settlement or for the supply of ships."

Note 124, page 548.

My correspondence with Earl Bathurst.

The despatch to which reference was made was addressed to under secretary Hay, and dated 27th March, 1827 (*see* page 206 *et seq.*).

Note 125, page 548.

The issues.

In the issue of the *Monitor* dated 17th September, 1827, the trial of Rex v. E. S. Hall before judge Stephen in the supreme court was reported. This was an action for non-compliance with the 14th clause of the act in council No. 2 (*see* note 70), which required the delivery of a copy of every newspaper on the day of publication to the colonial secretary. The non-delivery was in the case of the two issues of the *Monitor* magazine (*see* note 70) and three issues of the newspaper. The reference of Governor Darling was to the address of W. C. Wentworth for the defendant to the assessors, A. B. Spark and E. M. Scott, the defendant having been refused his application for a jury. Wentworth said, "Gentlemen, a more diabolical, damnable proceeding than the present never was instituted by any set of men! The publication of May the 18th is no more a *Newspaper* than the *Encyclopædia Britannica*." These acts of Council (he said) were vile attempts to stifle the Press of the Colony, an attempt acknowledged by the Government itself to be a smuggled attempt, because it rescinded one of them as premature. The motive of the Defendant in withholding the first Magazine, it was evident was simply to try the applicability of the Act. Had the Government joined issue with the defendant in that instance, they would have acted *liberally*; they would have acted *honorably*; but they have not done so, they have even refused the defendant a *Jury*, which refusal was most degrading to them! he would ask the Jury to contrast the proceedings of this Government with the conduct of the Government which preceded it! Was it becoming of them, of any Government, to take advantage of an individual? to force him against his will to be tried before two men instead of twelve? Oh! Gentlemen, it is indeed an unworthy act! . . . Connected as these proceedings were with the writings of the Editor, is it to be doubted that *vindictiveness* and *malice* are at the bottom of this prosecution? . . . This Gentleman is only the first of a number of vindictive prosecutions to be brought against the Defendant. . . . The Colony has aforetime laboured under arbitrary Government, but it was reserved for this Governor to deal in such conduct as the present. . . ."

In the issue of the *Gleaner*, dated 17th September, 1827, the prosecution for libel before judge Stephen of the editor by T. H. James was reported. In detailing the address of R. Wardell, counsel for the plaintiff, it stated, "We forbear to repeat the violent invectives, or to comment on the offensive epithets, which the learned Gentleman applied 'to an oppressive and tyrannical Government, which paralyses the energies of the Colony,' or on the merit he ascribed to a public Writer, 'for grappling with the monster, and dragging forth the scoundrel into light:' because we consider such declamation, especially when vented *unchecked*, 'in a Court of Justice'—such indecorous innuendoes, evidently levelled against the highest Personage of our Community, the Representative of our Sovereign,—calculated to produce infinitely greater mischief, than even the alleged libels in his Newspaper 'The Australian,' for which the learned Gentleman has shortly to meet a Criminal Information!"

In the issue of the *Sydney Gazette* dated 19th September, 1827, the propriety of publishing the speeches of W. C. Wentworth and R. Wardell in the *Monitor* newspaper was strongly condemned, and it was stated that it was libellous to print and publish the same.

In the issue of the *Sydney Gazette* dated 21st September, 1827, the conduct of R. Wardell was condemned in the leader, which commenced:—"So strong and lively were the emotions of astonishment and disgust created on Wednesday last, in the Supreme Court, upon the words dropping from the

lips of a certain Editor, in his other professional capacity, of *tyrant, monster, and scoundrel*, that the sensation spread like wild-fire on the following morning, and every one was, in his turn, exclaiming, 'Where will all this end?' We say such conduct is infamous and detestable in any Court of Justice, and ten thousand times more so, in the Supreme Court." The article proceeded to state that such conduct was condemned by everyone, and merited exemplary punishment.

Note 126, page 550.

My Dispatch No. 56.

This despatch was dated 21st April, 1827 (*see* page 264).

Note 127, page 550.

It is not likely that any foreign Power would attempt to establish itself in New Holland.

This was a direct official admission as to the secret cause of the establishment and maintenance of the subsidiary settlements at scattered points on the seaboard of Australia. The fear of foreign settlement on the continent had been mentioned previously (*see* note 57, volume XII).

Note 128, page 551.

The communications.

The despatches were dated 9th September, 1825, 25th February and 7th April, 1826 (*see* pages 58, 187, and 224, volume XII).

Note 129, page 553.

The Australian Trading Company.

This company's official title was the "Australian Company of Edinburgh," and on the 28th of May, 1824, an act of parliament was passed to enable it "to sue and be sued in the Name of the Manager for the Time being of the said Company." The company had been instituted on the 31st of October, 1822. Robert Brown was the manager, Ellis M. Scott the agent at Sydney, and Aiken and Mackie agents at Hobart. The company's ships were the *Greenock*, 442 tons; *Triton*, 404 tons; *Portland*, 385 tons; and the *City of Edinburgh*.

Note 130, page 554.

The Government Domain.

In the year 1827 the eastern shores of Sydney cove, now Circular quay, were occupied by the gardens of Government house and the government domain. The house stood at the corner of the modern Bridge and Phillip streets: the gardens extended to the foreshores from near the modern alignment of Young-street to a little north of the present Watson's bay ferry wharf. On the immediate water frontage there was a public footpath, leading to the domain. The domain included the whole of the promontory, ending in Fort Macquarie, lying north and east of the government house gardens.

Note 131, page 555.

The interior of Australasia or New South Wales.

The association of these two geographical terms is most unusual. At this period the name New South Wales was used strictly for the territory over which the governor at Sydney held control. Prior to the issue of Governor

Darling's commission, this territory included all that portion of the continent of Australia to the east of the hundred and thirty-fifth degree of east longitude. By Darling's commission the western boundary was extended six degrees further west. That portion of the continent lying to the west of these longitudes was known as New Holland. In the year 1827 the name Australia (*see* note 84, volume IX) was beginning to receive general recognition as the designation for the whole continent.

The name Australasia is a vague term, which has never acquired a commonly accepted definition. Its use by Charles de Brosses in 1756, by Callendar in 1766, and George Shaw in 1794 is recorded in note 84, volume IX.

Note 132, pages 556 and 619.

A Projected Expedition.—The existence of an Inland Sea.

The interior of the continent of Australia was a constant source of speculation. Prior to the discoveries of Matthew Flinders and Phillip Parker King, a popular idea was that the continent was divided into eastern and western portions by a strait (*see* note 293, volume II). When this idea was dispelled, the theory of the existence of a vast watershed, which drained the interior and reached the sea on the north-west coast, or an alternate theory of the existence of an inland sea gained many advocates. Prior to the year 1830, when Charles Sturt discovered the Murray river, the entrance of any large river into the sea was unknown. The journey of John Oxley in 1818 had been checked by the marshes of the Macquarie river. Allan Cunningham in 1827 had heard from the natives that great fish were caught in the large waters of the interior. The uninterrupted migration of birds was regarded as indicating either an inland sea or a desert. These data were used in argument by those who believed in the theory of an inland sea. The proximity of the dividing range to the eastern coast and the unknown destination of the rivers, which had been discovered arising on its western slopes, required explanation. Advocacy of the idea of a vast inland watershed induced Allan Francis Gardiner, a captain in the East India company's service, to publish a lengthy treatise in 1830 called "The Friend of Australia." Allan Cunningham, Charles Sturt and other explorers believed in an inland sea, and this last theory was maintained for nearly thirty years.

Note 133, pages 573 and 580.

Certain complaints.—Sydney Grant.—Deed of Grant.

Despatches with reference to the claims of John Blaxland will be found on pages 367 and 557, volume VII, on page 425, volume VIII, on pages 121 and 268, volume IX, and on page 28, volume XII.

The land mentioned in the deed of grant forms part of the site on which Governor Macquarie commenced the erection of the general hospital in 1810. It lies on the eastern side of the modern Macquarie-street, and was surrendered by Mrs. John Blaxland during the absence of her husband in England in connection with the proceedings consequent on the deposition of Governor Bligh.

Note 134, page 580.

6,500 acres.

This area was not granted to John Blaxland. On the 30th of November, 1813, Governor Macquarie granted Blaxland 6,710 acres, lying between the Nepean river and a branch of South creek, the grant being known as Luddenham.

Note 135, page 595.

Orders of the 8th of June, 1826, and the 16th of May, 1827.

These orders will be found on page 595, volume XII, and page 485 in this volume.

Note 136, page 608.

The remissions of sentences among the records of the Supreme Court.

In the first four volumes containing the records of land grants preserved in the office of the registrar-general at Sydney, the pardons, both absolute and conditional, are recorded also, beginning with number one to John Irving, dated 16th December, 1791, and continuing consecutively to the year 1809, the last being dated 2nd December, 1809.

Note 137, page 608.

Such contractors.

The method adopted for the transportation of convicts, under the provisions of the statute 4 Geo. I, cap. xi, was to transfer the services of the convict to a contractor, usually a ship-owner, who undertook to transport them. The convict thus became the property of the contractor for the term of his sentence. The contractor was allowed to re-assign his rights; and, in consequence, when the convicts were landed in the American colonies he sold them as virtual slaves to the highest bidder. The demand for labour was so great that high prices were given, and large profits were made under this system. Contractors, therefore, undertook to transport ship-loads of convicts free of all expense to the English government, and the latter was thereby relieved of all responsibility for the treatment of the convicts after leaving the shores of England.

Note 138, page 612.

A Scale of mere time.

The regulations controlling the issue of tickets of leave will be found on page 3.

Note 139, page 612.

The Government Notice of the 30th of July last.

This notice will be found on page 488.

Note 140, page 618.

An Excursion made by Mr. Cunningham.

Allan Cunningham was accompanied on this expedition by six servants, and was provided with eleven horses and provisions for fourteen weeks. He left Segenhoe, the estate of T. Potter Macqueen, on the 30th of April, 1827. After crossing the ranges, he skirted the Liverpool plains, and discovered and named the Dumaresq river. Some days were then spent in passing through poor country, until, on the 5th of June, Cunningham discovered and named the Darling downs, now part of the state of Queensland. He then led his expedition eastward, until he was enabled to take the bearings of Mount Waring at a distance of sixty or seventy miles. On the 16th of June, Canning downs were discovered, and, on the 28th of July, the expedition returned in safety to Segenhoe.

Note 141, page 631.

Mr. Riley.

Alexander Riley was one of the first successful merchants in the colony (*see* note 16, volume XII). He had retired from active business in the year 1818, and subsequently resided in England, but still maintained his pastoral interests in the colony.

Note 142, page 631.

Also pages 637 and 669.

The Admiralty Circular.

A copy of this circular, which is not available, was transmitted with a despatch dated 26th December, 1827 (*see* page 668). It conferred the same privileges as settlers on naval officers as had been conferred on military officers (*see* page 595, volume XII, and page 485 in this volume).

Note 143, page 639.

The Turf Club.

The Sydney turf club was formed on the 18th of March, 1825, and was honoured with the patronage of Sir Thomas Brisbane. At the initial meeting it was decided to hold two meetings *per annum*, in the spring and autumn. The racing took place on a course situated on an eminence in the rear of Grose farm, to the west of the modern Missenden-road, near St. John's college, Sydney university. The club was occasionally known as the "Australian turf club." Owing to the resignations of members, which followed on the action of Governor Darling, this club collapsed; and in April, 1828, preliminary meetings were held to form the Australian Racing and Jockey club. The first race meeting of this club was held on the 1st and 3rd of October following. In the issue of the *Sydney Gazette* dated 1st October, 1828, the "death" of the Turf club was announced, the notice being edged with a heavy black border, and the "birth" of the Australian Racing and Jockey club was published.

Note 144, page 641.

Their last Dinner.

On the 21st September, 1827, at a meeting of the Turf club, the following resolution was adopted:—"that the Members of the Turf Club do dine together on the 9th of November, and on each successive 9th of November, in commemoration of the honour done to the Club by his Excellency Sir Thomas Brisbane dining with them on that day, and in token of their grateful recollection of his patronage." The first and only dinner was held on the 9th of November following. About forty members sat down at Cummines' hotel at 6 p.m.: W. C. Wentworth acted as chairman, and John Mackenness as vice-chairman; and the band of the 57th regiment was in attendance. It was intended to send an invitation to Governor Darling to attend the dinner, but he had signified that he had no wish to be present.

Note 145, page 642.

A Cup.

Prior to his departure, Sir Thomas Brisbane announced his intention of presenting a cup for a racing prize. The race was known as the Brisbane cup, and was run for at weight-for-age in heats over two miles. The cup

had to be won three times, and in April, 1827, Andrew Nash's horse Junius, ridden by James Spinks, won it for the third time, "by which he became entitled to walk over the course for it, while he lives." The cup was presented to Andrew Nash at a meeting of the Turf club held on the 21st of September, 1827.

Note 146, page 642.

Also pages 644 and 647.

The enclosed Newspaper.

In the issue of the *Monitor* dated 12th November, 1827, there appeared an account of the turf club dinner. The remarks of W. C. Wentworth, the chairman, were reported as follows:—

"The Chairman then rose to propose a toast which he said he was certain would be drunk with heartfelt satisfaction by all present. To those who had been acquainted with the late Governor during his residence among us, it would be unnecessary to enumerate the many acts by which he became in a manner the father of Australia—one of the greatest and most efficient of our benefactors; but to those who were not in the Colony during his Administration, a few words upon the present occasion might be necessary. Sir Thomas Brisbane was the man (continued Mr. Wentworth with an animation that shewed he felt what he spoke) who mixed among the people, who came into our views, was present at our dinners, assemblies, and meetings, who examined into our wants, and when our Exchequer failed, drew his private purse-strings to supply the deficiency. It was this amiable and excellent man who fondly cherished every infantile attempt at advancement which we made, not only by his countenance and interest, but also helped them on to maturity by private as well as public pecuniary aids. He was the earliest *political* friend of which the Colony had to boast; to him this Institution owes its thanks in a most peculiar manner, for the generous way in which he has redeemed his pledge to it. The Race-Cup of Sir Thomas Brisbane he was sure would be preserved as a grateful memento of the worthy giver, and while recollection would hold, he hoped that the public and private virtues of that excellent man would never be forgotten. Before the present company should meet again upon the present occasion, a second pledge of his kind feeling toward our interests would in all probability have reached the Colony. Mr. W. concluded by proposing 'The health of Sir Thomas Brisbane!' It was drunk with the most unbounded enthusiasm, the shouts of applause lasting for several minutes. Air—'*Auld lang syne*,' which was played exquisitely, as if the band had been animated by the eloquent delivery of Mr. W.'s sentiments."

It was further reported that:—

"After an excellent song, Dr. Douglass proposed 'The health of the Chairman, as a principal promoter of the objects of this Society by his excellent breed of Horses.' Mr. Wentworth rose to return thanks; the compliment of his friend, which was so unequivocally expressed by the Assembly, was one to which he did not feel himself entitled, except the gentleman would accept the best efforts of an unsuccessful essayist at *breeding*. He had bred Horses and other animals it was true; but not of that superior description which should merit the very unqualified approbation bestowed upon him that evening.—Air—'*Australian Troop*' by Mr. Sippy, bandmaster of the 57th."

The remainder of the report was practically confined to an enumeration of the toasts and of the tunes played on drinking each one. The toast of the governor was mentioned without comment, thus:—"The Governor and the Colony—Tune—'*Over the Hills and far away*.'"

In the issue of the *Monitor* dated 15th November, 1827, in the leading article of two columns, comment was made on the tune played when the health of the governor was proposed. It pointed out first that the attendance at the dinner was "a tolerable representation of public feeling in matters of politics"; and secondly that the administration of Sir Thomas Brisbane, during the last six months of his office, was worthy of great praise. It was then stated:—"The Band on the health of Sir Thomas being drunk struck up the pathetic air of 'Auld lang syne.' But when the health of the present Governor was drunk, 'Over the hills and far awa' was the tune selected by the Stewards, as best expressive in their opinion of the feelings of the Company and the Colony.

"We like to record every frank expression of public feeling, with which the customs of English Society have invested Englishmen when they meet together for convivial purposes. We consider the playing of this air as effectual a display of the public feeling in regard to General Darling, as a public meeting could have been, that had for its object the consideration of the present policy. Because, in the latter case, it might have been alleged that any direct censures on his Government were the result of mere party spirit:—whereas by means of a simple incident like the one under consideration, there is no overt personality shewn; no expression that can be considered rude or disrespectful or disloyal or calumniating. The disapprobation is of a negative retiring character; but, on that very account, it the more distinctly appears to be the result of heart-felt conviction and undisguised sentiment."

The article then pointed out at some length that Governor Darling was not responsible for a large part of the new policy, but that this policy had been adopted by the English government at the instigation of John Thomas Bigge.

Note 147, page 643.

The Members.

Members of the Turf club were elected by ballot. Only thirteen were present at this meeting, whereas forty were present at the dinner. The casting vote of the chairman should have been given in favour of further discussion, and he should thus have voted against the resolutions in order that they might be again submitted, if necessary, at an adjourned meeting. The vote of J. Mackaness was prompted probably by his antagonism towards Governor Darling.

Note 148, page 648.

A Letter in the Sydney Gazette.

This letter was addressed to the editor, and it contained a general condemnation of the opposition to the administration of Governor Darling. In commenting on the dismissal of J. Mackaness, it stated:—"It is an event which every one must have expected, though some might have doubted how far General Darling had allowed a just resentment to master his natural reluctance to commit this necessary act of severity. The friends of Mr. Mackaness may affirm what they please, but I unhesitatingly declare to the Public there was not a man in the Colony more unguarded than that very individual, and it is notorious that his remarks were equally disagreeable and uncalled for. To say that more designing men have led him into error (and I am ready to admit it) is only acknowledging his culpability, not excusing it; although I do hope, for the sake of public justice, those who have thus, by encouragement and example, contributed to his misfortune, may not themselves escape with impunity."

In commenting on the opposition to the government, it stated:—"The conduct of the Colonies has given a fearful distrust of them to the States of Europe, and sterner policy may yet be established with regard to them. Who shall we have to blame for this, should it happen, and for all the dissensions and distrust among us? Those, Sir, whose violence of temper has been a curse to themselves and to all around them, and who are still labouring to effect their purposes, although the past should have taught them forbearance; men, who ought to do better things, but who are prostituting the noblest gifts of nature—reason and intelligence, to the worst of purposes. By my soul! the Government of this land is as ungrateful a task as ever fell to the lot of man."

Note 149, page 649.

A detail of the proceedings in the Sydney Gazette.

This was a *resumé* of the transactions of the turf club. It commenced by pointing out that recent events had compelled the governor to take action. The dinner of the turf club was then discussed, and the speech by W. C. Wentworth adversely criticised. The toast of the governor was then mentioned:—"Not content with allowing the then Patron to be pointed at obliquely, the factious Members of the Turf Club must lay the top-stone of their enmity on with shouting, by allowing a Member, at the time the health of the 'Governor' was drunk, to order the musicians to strike up '*Over the hills and far away*'; and, because some of the Gentlemen present felt indignant at such conduct, the Editor of the *Australian*, it is said, endeavoured to improve the first call, by proposing, in writing, '*There is nae luck about the house*,' when one of the Stewards destroyed the paper, and, whilst in the act of reprobating an attempt so vile, the Band struck up that tune which was intended, by a brace of individuals at least, as a personal insult to the Governor, though it was attempted afterwards to be converted into a compliment." The governor's withdrawal of his patronage from the club (*see* page 644) and the resolutions (*see* page 644) carried at the meeting of the turf club, held in consequence, were detailed and discussed. The governor's letter of resignation (*see* page 645) from the club was then printed, and an account of the meeting of the turf club and the resolutions carried followed (*see* pages 643 and 641). In reporting the last meeting, it was stated that, after the governor's communication was read, it was unsuccessfully proposed to dissolve the club.

In this report the name of C. D. Moore is included amongst the supporters of the resolutions, whilst Governor Darling included the name amongst the opponents (*see* page 643).

Note 150, page 650.

Also page 693.

James Stephen.

James Stephen was the third son of James Stephen, member for Tralee in the English parliament, and was the nephew of John Stephen, judge of the supreme court in New South Wales. He was born on the 3rd of January, 1789, and was educated at Trinity college, Cambridge. He was called to the bar at Lincoln's Inn in 1811, and took the degree of LL.B. in 1812. He made a special study of colonial laws; and, in 1813, he was appointed counsel to the colonial office, his duties being to examine and report on the acts of the colonial legislatures. At the same time, he was allowed private practice. In 1822 he suffered a severe illness from overwork, and in consequence was

induced in 1825 to accept the position of permanent counsel to the colonial office and the board of trade. In 1834 he became assistant under secretary for the colonies, and in 1836 under secretary. His vast knowledge of colonial law associated with his official position made him the "uncrowned king of the colonies." In 1847 his health again broke down from overwork, and he resigned office, and received the honours of K.C.B. and a privy councillorship. For many years he had been a contributor to the *Edinburgh Review*, and his articles had given evidence of a deep knowledge of history. In 1849 he was appointed regius professor of modern history at Cambridge. He died on the 14th of September, 1859.

Note 151, page 652.

Also pages 680, 814, and 824.

The New South Wales Bill.

This was the statute which became 9 Geo. IV, cap. lxxxiii. At this period it was under consideration. It was passed on the 25th of July, 1828.

Note 152, page 654.

The proceedings in the case of the Bill respecting the Press.

These proceedings were reported by Governor Darling in despatches dated 11th, 29th, and 30th May, and 1st June, 1827 (*see* pages 289, 374, 380, and 391).

Note 153, page 659.

The appointment solicited.

The appointment was the office of deputy surveyor general (*see* pages 535 and 541, volume XII).

Note 154, page 678.

My Despatch No. 8 of the 14th Instant.

The despatch referred to was numbered 9 and dated 15th January (*see* page 706). This is another example of the method adopted in dating despatches; it is curious that reference should be made to a despatch so numbered and dated, in a despatch numbered 3 and dated 4th January.

Note 155, page 678.

Mr. Rumker, Government Astronomer.

Charles Stargard Rumker (*see* note 39, volume XI) had arrived in the colony with Sir Thomas Brisbane in 1821 under an engagement as the governor's private astronomer. The instruments at the Parramatta observatory were purchased by government from Sir Thomas Brisbane in 1826 (*see* page 706 *et seq.*, volume XII).

Note 156, page 679.

The Observatory.

The observatory was situated about one hundred yards from the back of the government house at Parramatta (*see* note 137, volume XI).

Note 157, page 681.

The tenth Section.

The tenth section of the statute 4 Geo. IV, cap. xevi, was as follows:—

"And be it further enacted, That the said Supreme Courts respectively shall be Courts of Ecclesiastical Jurisdiction, and shall have full Power and

Authority to administer and execute within *New South Wales* and *Van Diemen's Land*, and the Dependencies thereof respectively, such Ecclesiastical Jurisdiction and Authority as shall be committed to the said Supreme Courts respectively by His Majesty's said Charters or Letters Patent; provided, that in all Cases where the Executor or Executors of any Will, upon being duly cited, shall refuse or neglect to take out Probate, or where the next of Kin shall be absent, and the Effects of the Deceased shall appear to the said Judges respectively to be exposed and liable to Waste, it shall be lawful for the said Judges respectively to authorize and empower the Registrar, or other Ministerial Officer of the said Supreme Courts respectively, to collect such Effects, and hold or deposit or invest the same in such Manner and Place, or upon such Security, and subject to such Orders and Directions as shall be made, either as applicable to all such Cases, or specially in any Case, by the said Judges, in respect of the Custody, Controul or Disposal thereof."

Note 158, pages 682, 788, and 818.

The Charter.

This was the second charter of justice issued under the statute 4 Geo. IV, cap. xevi. A copy will be found in a volume in series IV.

Note 159, page 688.

A detailed abstract of revenue.

This was similar to the abstract on page 542, except that it related to the year ending 31st December instead of that ending 30th September, 1827.

Note 160, page 690.

Under Secretary Stanley to Governor Darling.

The name of the vessel by which these two letters were transmitted is not available. The second letter was received by Governor Darling on the 10th of October, 1828.

Note 161, page 692.

Also page 694.

Reported in the Australian of the 2nd instant.

The report was on the proceedings in the supreme court on the 28th and 31st of December, 1827. On the first day, application was made by R. Wardell and W. C. Wentworth for a rule to show cause why a criminal information should not be filed against Alexander Macleay. On the second day the chief justice gave his decision. After discussing the duties and legal responsibilities of Macleay in his official capacity as colonial secretary, the chief justice commented at length on the license of criticism, which had then recently been used in the press, and on the ill-feeling prevalent in the colony. He concluded:—"the rule which is now sought is, in our opinion, calculated to renew discussions and revive feelings, which it were better should be suffered to subside. We shall, therefore, defer making any order upon the application before the Court, until the ensuing term."

On the 4th of March, 1828, the application was again mentioned, when the court decided:—"we are of opinion, considering ourselves as the guardians of this process of the court, that no public benefit would arise from granting the rule, and on this ground we refuse it."

Note 162, page 694.

My despatch, No. 10.

The despatch numbered 10 was dated 16th January, and, as it is quoted in a despatch dated 10th January, it affords another instance of want of precision in the method of dating (*c.f.* note 154).

Note 163, page 695.

The humble Memorial.

A letter from lieutenant Robert Stirling, dated 11th January, 1828, accompanied this memorial. The letter was written by direction of Sir Thomas Brisbane, approving of the prayer of the memorialist.

Note 164, page 700.

Also page 703.

The Sydney Gazette of the 19th Ultimo.

In the sub-leader, the non-renewal of J. Mackaness' term of office as sheriff was discussed. This action was endorsed, and Mackaness was censured for neglecting to curtail the criticism of the government when acting as chairman at various meetings. The dismissal of W. H. Moore from the office of crown solicitor was then mentioned. He was described as a "politician of the second order." His opposition to the government was exemplified at length, by references to his acting for the Reverend B. Vale in the seizure of an American vessel during the administration of Governor Macquarie; to his friendship for Barron Field in opposition to Sir Thomas Brisbane; to his secretaryship to the opposition dinner to Sir Thomas Brisbane in November, 1825; and to his anti-emancipist policy. His antagonism towards Governor Darling was then adversely criticised. The dismissal of C. D. Moore was considered beneath notice.

Note 165, page 701.

The Meeting.

The meeting was of the members of the turf club, and was held on the 11th of December, 1827, at which certain resolutions were carried (*see* page 641).

Note 166, page 701.

I was professionally concerned for the Revd. Benjamin Vale.

The seizure of the American schooner *Traveller* by the reverend Benjamin Vale, for whom W. H. Moore acted in a legal capacity, was reported by Governor Macquarie in his despatch dated 8th March, 1816 (*see* page 42 *et seq.*, volume IX).

Note 167, page 707.

A public Trial.

This was the trial *Rex v. E. S. Hall*, on the 17th of September, 1827, in which W. C. Wentworth acted as counsel for E. S. Hall (*see* note 125).

Note 168, page 713.

A copy of this letter.

The first despatch, dated 11th March, 1827, and its enclosures, in which the complaint of P. McIntyre against H. Dangar was reported, will be found

on page 149 *et seq.* The voluminous papers which were subsequently transmitted (*see* pages 288 and 502) in this case have been transferred to a volume in series II.

Note 169, page 717.

Also pages 718 and 720.

Prosecutions for Libel.

In the issues of the *Sydney Gazette* dated 1st and 3rd October, 1827, the trial of R. Wardell on the 29th of September was reported. The charge was that the defendant printed and published a false, scandalous and seditious libel of, and concerning Governor Darling in the *Australian* newspaper of the 3rd of August, 1827. The jury could not agree in their verdict, and the defendant was discharged.

In the issues dated 26th and 28th December, 1827, the trial of R. Wardell on the 22nd of December was reported. The charge was similar to the previous one for a letter, signed *Vox Populi*, published in the *Australian* newspaper of the 25th of May. The trial also resulted in a disagreement of the jury.

In the issue dated 3rd January, the application for a rule to show cause why a criminal information should not be filed against Alexander Macleay was reported (*see* note 161).

Note 170, page 721.

1353, 1400, 1402, 1407, 1409, 1411, 1415, 1442, 1444.

These numbers were dated 30th May, 17th and 21st September, 3rd, 8th, 12th and 22nd October, and 24th and 28th December.

In number 1353, there was a reference to the recent gaol delivery; in number 1400, to the many criminal prosecutions for libel; in number 1402, to the license allowed to counsel by judge Stephen; in numbers 1407, 1409, and 1411, to the first prosecution of R. Wardell for libel; in number 1415, to the presentment of the grand jury; and in numbers 1442 and 1444, to the second prosecution of R. Wardell for libel. In none of these does a spirit of "levity" appear in any marked degree.

Note 171, page 722.

The insignia of official authority.

The issues of the *Sydney Gazette* up to and inclusive of that dated 6th May, 1826, had the following heading:—"The Sydney Gazette and New South Wales Advertiser. Published by Authority." Subsequently the last three words were omitted. Both before and after the date mentioned, the following notice appeared after the heading:—"His Excellency the Governor in Chief has thought proper to direct that all Public Communications, which may appear in the Sydney Gazette and New South Wales Advertiser, signed with any Official Signature, are to be considered as Official Communications made to those Persons to whom they may relate.

"By Command of His Excellency the Governor in Chief,

"ALEXANDER M'LEAY, Colonial Secretary."

Note 172, page 728.

A Son and Brother of Gentlemen.

Francis Stephen was the son of John Stephen, the judge in the supreme court, and the brother of John Stephen, jr., who, in October, 1827, had been appointed one of the commissioners for apportioning and valuing the land in the colony.

Note 174, page 732.

Your Letter of the 28th Ultimo.

This letter will be found on page 685.

Note 175, page 736.

Minute of Proceedings.

On the 2nd of August, 1826, Governor Darling submitted, for the consideration of the executive council, Earl Bathurst's despatch, numbered 29 and dated 12th December, 1825 (*see* page 84, volume XII), which directed that the draft of an order in council should be transmitted for consideration on the proposed extension of trial by jury. The despatch was discussed at a meeting on the 9th of August, and the principles to be adopted were decided; at the same time certain returns were called for, including "A List of Persons who have received the King's or a Conditional Pardon, or have become Free by Servitude." On the 15th of August, the despatch was again considered. It was then decided that it was too late to propose an order in council to be issued by virtue of the act 4 Geo. IV, cap. xevi, as that statute was limited in operation to four years; and the council therefore made suggestions for modifications of the current system to be incorporated in a clause in the new act. Consideration was given to the legal status of persons, pardoned by the governor under powers conferred on him by the act 30 Geo. III, cap. xlvii. It was decided "since the passing of the Act, 6 Geo. IV cap. 1, sec. iii, for regulating Special Juries in England, *declaring* that all Persons, who have received a *Free Pardon*, are eligible to serve as Jurors, The Council were led to assume that such Persons are admissable as Jurors in this Colony." Seven points were submitted for the consideration of His Majesty's government, leaving it an open question whether it would be most expedient to effect the changes by English or colonial legislation. The two points, which referred to emancipists were numbered 1 and 2:—

"1st. It was assumed that the point of Law has been settled, vizt. that a Person, attainted or Convicted of Felony, is restored by a Free Pardon to the Legal Competency of serving as a Juror.

"2nd. It was deemed inexpedient, under any view of the Case, to raise such a question in New South Wales."

Note 176, page 736.

The Sydney Gazette.

In the issue dated 23rd January, 1828, the trial of William Redfern for an assault on R. Howe was reported. After the chairman of the court of quarter sessions had summed up, stating that there was a clear case of assault proved,

"The Jury retired for about half an hour, and, on their return into Court, the Clerk of the Peace called over their names, and put the usual question, Gentlemen, have you agreed in your verdict; how say you, is William Redfern guilty or not guilty?

"The Foreman of the Jury. *Guilty*, but we recommend him to merey, *on account of the aggravated assault!!!*

"A burst of laughter followed the delivery of this verdict, and the Chairman requested the Foreman to repeat the grounds upon which the Jury recommended the defendant to merey.

"The Foreman.—Why we can't tell who struck the first blow. It's that puzzles us. We can't come at that. (Another loud laugh.)

"The Chairman.—Then, gentlemen, you are not agreed.

"The Foreman.—Oh yes, we are all agreed that the defendant is guilty of the assault. We are only at a loss to know who struck first. (More laughter.)

"The Jurors here began to address the Bench, *una voce*, and the confusion became general, until one of the gentlemen, a Mr. Perry, who appeared to comprehend the nature of the case in a clearer light than his brethren, stated to the Court that the Jury were all agreed the defendant was guilty, but recommended him to the consideration of the Court, in consequence of the provocation they were of opinion he had received.

"The Foreman—Yes, that is what we mean."

After hearing counsel, the chairman fined Redfern £50.

Note 177, page 744.

Also page 747.

Redress in the Supreme Court.

The case was tried in the supreme court before the chief justice, F. Forbes, on the 29th of February, 1828. James Norton appeared for the prosecution, and W. C. Wentworth for J. Mackaness. Evidence for the prosecution was given, which was so clear that the chief justice, in his summing up, directed the jury to bring in a verdict of guilty. No sentence was passed, but "the defendant, by consent of the prosecutor, was allowed to depart the Court on his undertaking to appear, when called upon, for judgment."

Note 178, pages 744 and 745.

The Letter.—My Letter.

These letters will be found on pages 640 and 639 respectively.

Note 179, page 755.

His Memorial to Earl Bathurst.

This memorial will be found on page 372 *et seq.*, volume XI.

Note 180, page 777.

The Charter.

A draft of this charter will be found on page 444 *et seq.*, volume XI, and the quotation from the twenty-seventh section on page 451.

Note 181, page 779.

Your despatch.

This despatch was dated 11th March, 1827 (*see* page 149 *et seq.*).

Note 182, page 780.

The communication.

The despatch was dated 31st January, 1825 (*see* page 482 and note 116, volume XI).

Note 183, page 781.

The regulations.

These regulations will be found on page 595, volume XII, and on pages 485 and 596 in this volume.

Note 184, page 784.

Report of the Inquest . . . in the enclosed Number.

The inquest on George Galway Mills was held at the Bricklayers' Arms hotel in Market-street on the 14th of February, 1828. Evidence was given by Dr. Bland that he had observed deceased suffering from frequent attacks of depression and mental derangement. J. Mackaness and deceased's servant testified to his depression and financial embarrassment, the servant stating that his master had become security for the payment of £4,000, and expected to be called upon to pay. A constable stated that he saw deceased mentally deranged in the street near the court house. Both Dr. Bland and J. Mackaness had expected suicide. Evidence was tendered of the purchase of pistols by deceased, and of the examination of the body by Dr. Cook. The verdict was death by bullet wound in the head, self inflicted during a fit of insanity.

Note 185, pages 787, 804, and 822.

My Commission.

Governor Darling's commission will be found on page 99 *et seq.*, and the quotation at the foot of page 102 in volume XII.

Note 186, page 793.

"Separate" of the same date.

A copy of this despatch is not available. Instructions for regulating the correspondence of the governor had been sent from England in the years 1823 and 1825 (*see* page 336, volume XI, and page 38, volume XII). Subsequent to the month of February, 1828, the despatches of the governor were classified under different headings (*see* volumes following).

Note 187, page 793.

Viscount Goderich's Despatch No. 35.

This despatch was dated 25th July, 1827 (*see* page 460).

Note 188, page 812.

That . . . in the case of the Stamp Act.

The course of action adopted by chief justice Forbes was detailed in despatches dated 29th and 30th May and 1st June, 1827 (*see* pages 374, 380, and 391).

Note 189, pages 817 and 821.

With.

In the original, the "letter" and the "remarks" were written in parallel columns. The "remarks" have been interpolated in the text of the "letter" in order to economise space in printing.

Note 190, page 818.

Also pages 819, 820, 821, 823, and 825.

My letter . . . dated the 15th December, 1827.

This letter will be found on page 680 *et seq.*

Note 191, page 827.

Also pages 830 and 831.

A Letter.—This letter.

The letter to the colonial secretary and Governor Darling's letter dated 18th February will be found on pages 807 and 808.

SYNOPSIS OF DESPATCHES.

From	To	Dated	Despatch endorsed	Transmitted per—	See page	Acknowledged by—	Date of acknow- ledgment.
Bathurst, Earl	Darling, Governor	1827.	Circular	Ship Guilford	1	Darling, Governor	1827.
Darling, Governor	Bathurst, Earl	1 Jan.	No. 1	Ship Marquis of Huntly	2	do	2 Aug.
Do	do	1 Jan.	No. 2	do	2	Goderich, Viscount	5 Aug.
Do	do	3 Jan.	No. 3	do	5	do	7 July
Do	Commissioners of Navy	3 Jan.	No. 4	do	8	Goderich, Viscount	10 July.
Hay, Under Secretary	Bathurst, Earl	4 Jan.	No. 5	do	13	Darling, Governor	2 Aug.
Bathurst, Earl	Darling, Governor	5 Jan.	No. 6	Ship Guilford	13	Darling, Governor	2 Aug.
Darling, Governor	Bathurst, Earl	6 Jan.	No. 7	Ship Marquis of Huntly	14	Darling, Governor	2 Aug.
Bathurst, Earl	Darling, Governor	10 Jan.	No. 8	Ship Marquis of Huntly	14	Goderich, Viscount	10 July.
Darling, Governor	Bathurst, Earl	10 Jan.	No. 9	Ship Marquis of Huntly	15	Darling, Governor	2 Aug.
Hay, Under Secretary	Darling, Governor	11 Jan.	No. 10	Ship Marquis of Huntly	16	Goderich, Viscount	10 July.
Darling, Governor	Bathurst, Earl	11 Jan.	No. 11	Ship Guilford	16	Darling, Governor	2 Aug.
Bathurst, Earl	Darling, Governor	18 Jan.	No. 12	do	17	Darling, Governor	2 Aug.
Do	do	18 Jan.	No. 13	do	17	do	22 Oct.
Hay, Under Secretary	Bathurst, Earl	18 Jan.	No. 14	Ship Marquis of Huntly	23	Darling, Governor	2 Aug.
Darling, Governor	Bathurst, Earl	18 Jan.	No. 15	Ship Marquis of Huntly	23	Darling, Governor	2 Aug.
Hay, Under Secretary	Darling, Governor	20 Jan.	No. 16	Ship Marquis of Huntly	31	do	2 Aug.
Bathurst, Earl	do	21 Jan.	No. 17	do	35	do	2 Aug.
Do	do	21 Jan.	No. 18	do	36	do	2 Aug.
Hay, Under Secretary	Bathurst, Earl	22 Jan.	No. 19	do	37	Goderich, Viscount	11 July.
Darling, Governor	Bathurst, Earl	26 Jan.	No. 20	Ship Marquis of Huntly	38	do	11 July.
Do	do	27 Jan.	No. 21	do	43	Hay, Under Secretary	11 July.
Do	do	27 Jan.	No. 22	do	47	do	11 July.
Do	do	28 Jan.	No. 23	do	49	Goderich, Viscount	12 July.
Do	Bathurst, Earl	29 Jan.	No. 24	do	50	Darling, Governor	2 Aug.
Do	Hay, Under Secretary	31 Jan.	No. 25	do	60	Darling, Governor	2 Aug.
Do	Darling, Governor	31 Jan.	Secret	Ship Guilford	62	Darling, Governor	2 Aug.
Bathurst, Earl	Bathurst, Earl	1 Feb.	No. 5	Ship Marquis of Huntly	62	do	2 Aug.
Darling, Governor	Bathurst, Earl	1 Feb.	No. 12	do	63	Darling, Governor	2 Aug.
Do	Hay, Under Secretary	1 Feb.	Private	Ship Guilford	64	Goderich, Viscount	13 July
Hay, Under Secretary	Darling, Governor	2 Feb.	No. 13	Ship Marquis of Huntly	67	Hay, Under Secretary	13 July
Darling, Governor	Bathurst, Earl	2 Feb.	No. 14	do	72	do	13 July
Do	do	3 Feb.	Private	do	73	do	13 July
Do	Hay, Under Secretary	3 Feb.	Private	do	73	do	13 July
Do	Commissioners of Navy	3 Feb.	Private	do	73	do	13 July
Do	Barnard, E.	3 Feb.	Private	do	78	do	13 July

From	To	Dated	Despatch endorsed	Transmitted per—	See page	Acknowledged by—	Date of acknow- ledgment.
Darling, Governor	Bathurst, Earl	1827. 4 Feb.	No. 15	Ship Marquis of Huntly	73	Goderich, Viscount	1827. 19 July.
Do	do	5 Feb.	No. 16	do	75	.....	.....
Do	do	6 Feb.	No. 17	do	75	.....	.....
Do	do	6 Feb.	Separate	do	76	.....	.....
Do	Hay, Under Secretary	6 Feb.	.....	do	76	.....	.....
Do	Horton, Under Secretary	6 Feb.	Private	do	79	.....	.....
Do	Hay, Under Secretary	6 Feb.	Private	do	81	.....	.....
Do	Bathurst, Earl	7 Feb.	No. 18	do	83	.....	.....
Do	Hay, Under Secretary	7 Feb.	Secret	do	83	.....	.....
Do	Bathurst, Earl	8 Feb.	No. 19	do	84	Goderich, Viscount	14 July.
Do	Hay, Under Secretary	8 Feb.	Private	do	85	.....	.....
Do	do	8 Feb.	Private	do	86	.....	.....
Do	do	8 Feb.	.....	do	86	.....	.....
Do	Barnard, Esq.	8 Feb.	.....	do	88	.....	.....
Do	Bathurst, Earl	9 Feb.	No. 20	do	88	Goderich, Viscount	30 July.
Do	Hay, Under Secretary	9 Feb.	.....	do	96	.....	.....
Do	do	9 Feb.	Private	do	96	.....	.....
Do	do	9 Feb.	Secret	do	96	.....	.....
Do	Barnard, Esq.	9 Feb.	.....	do	102	.....	.....
Do	Bathurst, Earl	10 Feb.	No. 21	do	103	.....	.....
Do	Secretary of State	10 Feb.	.....	do	104	.....	.....
Do	Hay, Under Secretary	10 Feb.	.....	do	104	.....	.....
Do	do	10 Feb.	Private	do	104	.....	.....
Hay, Under Secretary	Darling, Governor	11 Feb.	.....	Ship Guilford	105	Hay, Under Secretary	18 July.
Do	do	11 Feb.	.....	.....	107	Darling, Governor	2 Aug.
Darling, Governor	Bathurst, Earl	12 Feb.	No. 22	Ship Queen Charlotte	109	.....	.....
Do	do	12 Feb.	.....	do	110	Goderich, Viscount	31 July.
Do	do	13 Feb.	No. 23	do	110	.....	.....
Do	do	14 Feb.	No. 24	do	111	.....	.....
Do	Hay, Under Secretary	14 Feb.	.....	do	112	.....	.....
Do	Bathurst, Earl	15 Feb.	No. 25	do	112	Goderich, Viscount	25 July
Do	do	16 Feb.	No. 26	do	113	Huskisson, Right Hon.	26 Dec.
Do	do	17 Feb.	No. 27	do	114	Win.	26 July.
Hay, Under Secretary	Darling, Governor	18 Feb.	.....	Ship Guilford	115	Goderich, Viscount	22 Dec.
Bathurst, Earl	do	19 Feb.	No. 6	do	115	Darling, Governor	3 Aug.
Do	do	19 Feb.	No. 7	do	117	do	2 Aug.
Do	do	20 Feb.	No. 8	do	118	do	28 July.
Darling, Governor	Bathurst, Earl	20 Feb.	No. 28	Ship Queen Charlotte	118	.....	.....

From	To	Dated	Despatch endorsed	Transmitted per—	See page	Acknowledged by—	Date of acknowledgment.
Hay, Under Secretary	Darling, Governor	1827.	.....	Ship Guilford	118	Darling, Governor	1827.
Darling, Governor	Bathurst, Earl	21 Feb.	No. 29	Ship Queen Charlotte	119	Goderich, Viscount	2 Aug.
Hay, Under Secretary	Darling, Governor	21 Feb.	.....	Ship Guilford	120	Darling, Governor	27 July.
Darling, Governor	Bathurst, Earl	22 Feb.	No. 30	Ship Queen Charlotte	122	Goderich, Viscount	2 Aug.
Hay, Under Secretary	Darling, Governor	23 Feb.	.....	Ship Guilford	124	Darling, Governor	2 Aug.
Darling, Governor	Bathurst, Earl	23 Feb.	No. 31	Ship Queen Charlotte	125	Goderich, Viscount	6 Aug.
Do	do	24 Feb.	No. 32	do	128	.....	.....
Do	do	26 Feb.	No. 33	do	128	.....	.....
Do	Hay, Under Secretary	26 Feb.	No. 34	do	129	Hay, Under Secretary	27 July.
Do	Bathurst, Earl	27 Feb.	.....	do	129	Goderich, Viscount	27 July.
Do	do	28 Feb.	No. 35	do	130	Huskisson, Right Hon.	1828.
Hay, Under Secretary	Darling, Governor	1 Mar.	.....	Ship Guilford	132	Wm.	17 Jan.
Darling, Governor	Bathurst, Earl	1 Mar.	No. 36	Ship Queen Charlotte	134	Darling, Governor	1827.
Do	do	1 Mar.	Separate	do	135	Goderich, Viscount	2 Aug.
Do	do	2 Mar.	No. 37	do	141	.....	28 July.
Bathurst, Earl	Darling, Governor	4 Mar.	No. 9	Ship Guilford	141	Hay, Under Secretary	9 Aug.
Darling, Governor	Hay, Under Secretary	6 Mar.	.....	Ship Magnct	143	Darling, Governor	2 Aug.
Do	do	7 Mar.	Private	Ship Queen Charlotte	146	.....	.....
Do	do	9 Mar.	.....	Ship Magnet	147	.....	.....
Hay, Under Secretary	Darling, Governor	10 Mar.	.....	Ship Layvon	147	.....	.....
Darling, Governor	Bathurst, Earl	10 Mar.	No. 38	Ship Magnet	148	.....	.....
Do	do	11 Mar.	No. 39	do	149	Huskisson, Right Hon.	15 Oct.
Do	do	12 Mar.	No. 40	do	156	Wm.	1 Oct.
Do	do	13 Mar.	No. 41	do	158	do	1828.
Hay, Under Secretary	Darling, Governor	14 Mar.	.....	Ship Guilford	161	Darling, Governor	17 Feb.
Do	do	14 Mar.	No. 42	Ship Magnet	162	.....	1827.
Darling, Governor	Bathurst, Earl	14 Mar.	.....	do	162	Huskisson, Right Hon.	2 Aug.
Bathurst, Earl	Darling, Governor	15 Mar.	No. 10	Ship Guilford	164	Wm.	27 Dec.
Do	do	16 Mar.	No. 11	do	165	Darling, Governor	28 July.
Do	do	16 Mar.	No. 12	do	165	do	2 Aug.
Darling, Governor	Bathurst, Earl	17 Mar.	No. 43	Ship Magnet	166	do	2 Aug.
Do	do	18 Mar.	No. 44	do	168	Huskisson, Right Hon.	31 Oct.
						Wm.	

From	To	Dated	Despatch endorsed	Transmitted per—	See page	Acknowledged by—	Date of acknow- ledgment.
Darling, Governor	Hay, Under Secretary	1827. 4 April	.....	Ship Australia	233	Hay, Under Secretary	1827. 3 Nov.
Bathurst, Earl	Darling, Governor	5 April	Circular	Ship Manlius	234	Darling, Governor	16 Aug.
Hay, Under Secretary	do	5 April	.....	do	234	do	16 Aug.
Do	do	5 April	.....	do	235	do	16 Aug.
Do	do	5 April	.....	do	235	do	16 Aug.
Darling, Governor	Bathurst, Earl	5 April	No. 46	Ship Australia	236	Huskisson, Right Hon. Wm.	7 Nov.
Do	Harrison, Secretary	5 April	.....	do	237	.....	.....
Bathurst, Earl	Darling, Governor	6 April	No. 31	Ship Manlius	238	Darling, Governor	1 Dec.
Hay, Under Secretary	do	6 April	.....	do	238	do	16 Aug.
Do	do	6 April	.....	Ship Marquis of Hastings	239	.....	.....
Darling, Governor	Bathurst, Earl	6 April	Separate	Ship Australia	239	Huskisson, Right Hon. Wm.	1828. 20 Jan.
Do	do	7 April	No. 47	do	240	do	1827.
Bathurst, Earl	Darling, Governor	8 April	No. 32	Ship Cambridge	242	Darling, Governor	9 Nov.
Darling, Governor	Bathurst, Earl	8 April	No. 48	Ship Australia	242	Huskisson, Right Hon. Wm.	11 Dec. 1828.
Do	do	9 April	No. 49	do	244	do	31 Mar.
Do	do	10 April	No. 50	do	245	do	1827.
Do	do	10 April	Separate	do	246	do	8 Nov.
Do	do	11 April	No. 51	do	247	do	4 Nov.
Do	do	12 April	No. 52	do	249	do	4 Nov.
Do	Harrison, Secretary	12 April	.....	do	250	do	1828. 30 April.
Do	Bathurst, Earl	14 April	No. 53	do	251	Huskisson, Right Hon. Wm.	.....
Do	Hay, Under Secretary	15 April	Private	do	251	.....	.....
Hay, Under Secretary	Darling, Governor	17 April	.....	Ship John	254	.....	.....
Darling, Governor	Bathurst, Earl	17 April	No. 54	Ship Australia	254	Huskisson, Right Hon. Wm.	Nov.
Bathurst, Earl	Darling, Governor	18 April	No. 33	Ship Cambridge	257	Darling, Governor	1 Dec.
Darling, Governor	Bathurst, Earl	18 April	Separate	Ship Australia	259	Huskisson, Right Hon. Wm.	31 Oct.
Do	do	19 April	No. 55	do	264	.....	.....

From	To	Dated	Despatch endorsed	Transmitted per—	Sec page	Acknowledged by—	Date of acknow- ledgment.
Darling, Governor	Bathurst, Earl ..	1827. 21 April	No. 56	Ship Australia	264	Huskisson, Right Hon. Wm.	1828. 28 Jan. 1827.
Do	do	23 April	No. 57	do	266	do	7 Nov.
Do	Taylor, Sir Herbert	25 April	No. 58	do	267	Huskisson, Right Hon. Wm.	10 Nov.
Do	Bathurst, Earl ..	26 April	No. 59	do	268	do	1 Oct.
Goderich, Viscount	do	29 April	Separate	do	269	Darling, Governor	1 Oct.
Darling, Governor	Bathurst, Earl ..	30 April	Circular	Ship Cambridge	270	Darling, Governor	1 Oct.
Goderich, Viscount	Darling, Governor	30 April	Separate	Ship Australia	270	Darling, Governor	1 Oct.
Darling, Governor	Bathurst, Earl ..	1 May	No. 1	Ship Harmony	270	Huskisson, Right Hon. Wm.	15 Nov.
Goderich, Viscount	Bathurst, Earl ..	1 May	No. 2	Ship Australia	271	Darling, Governor	1 Oct.
Do	Darling, Governor	2 May	No. 3	Ship Cambridge	272	do	1 Oct.
Darling, Governor	do	2 May	No. 4	do	272	Huskisson, Right Hon. Wm.	1828.
Do	Bathurst, Earl ..	3 May	No. 5	Ship Australia	272	do	30 Jan.
Do	do	5 May	No. 6	do	274	do	30 Aug.
Hay, Under Secretary	Darling, Governor	8 May	No. 61	do	276	Murray, Sir George	1827.
Darling, Governor	Bathurst, Earl ..	8 May	No. 62	Ship Australia	277	do	10 Nov.
Do	do	10 May	Separate	do	287	Huskisson, Right Hon. Wm.	1827.
Do	do	11 May	No. 63	do	289	do	10 Nov.
Do	do	12 May	No. 64	do	297	Huskisson, Right Hon. Wm.	1828.
Do	Taylor, Sir Herbert	12 May	No. 65	do	297	Darling, Governor	12 Jan.
Goderich, Viscount	Darling, Governor	13 May	No. 66	Ship Cambridge	298	Huskisson, Right Hon. Wm.	1827.
Darling, Governor	Bathurst, Earl ..	13 May	No. 67	Ship Australia	300	do	29 Nov.
Do	Hay, Under Secretary	14 May	No. 68	do	301	do	1828.
Do	Bathurst, Earl ..	15 May	No. 69	do	304	do	5 Mar.
Do	Hay, Under Secretary	15 May	No. 70	do	306	Hay, Under Secretary	11 Nov.
Do	Taylor, Sir Herbert	15 May	No. 71	do	307	do	6 Nov.
Do	do	15 May	No. 72	do	308	do	do
Do	do	16 May	No. 73	do	308	do	do

From	To	Dated	Despatch endorsed	Transmitted per—	See page	Acknowledged by—	Date of acknow- ledgment.
Darling, Governor	Bathurst, Earl	1827. 17 May	No. 67	Ship Australia	308	Huskisson, Right Hon. Wm.	1827. 12 Nov.
Hay, Under Secretary	Darling, Governor	18 May		Ship Champion	309		
Goderich, Viscount	do	19 May	No. 5	do	310	Darling, Governor	1 Oct.
Darling, Governor	Bathurst, Earl	19 May	No. 68	Ship Australia	311	Huskisson, Right Hon. Wm.	30 Nov.
Hay, Under Secretary	Darling, Governor	20 May		Ship Champion	315		
Darling, Governor	Bathurst, Earl	21 May	No. 69	Ship Australia	315	Huskisson, Right Hon. Wm.	1828. 8 Feb.
Do	Taylor, Sir Herbert	22 May		do	317		
Do	Bathurst, Earl	23 May	No. 70	do	318		
Do	do	24 May	Separate	do	318	Huskisson, Right Hon. Wm.	11 Feb.
Do	Harrison, Secretary	24 May		do	361		
Do	Bathurst, Earl	25 May	No. 71	do	362	Huskisson, Right Hon. Wm.	30 Jan.
Do	Hay, Under Secretary	25 May		do	371		
Do	Bathurst, Earl	26 May	No. 72	do	372		1827.
Goderich, Viscount	Darling, Governor	28 May	Separate	Ship John	372	Darling, Governor	1 Dec.
Hay, Under Secretary	do	28 May		Ship Harmony	373		
Do	do	28 May			374		
Darling, Governor	Bathurst, Earl	29 May	Separate	Ship Australia	374	Murray, Sir George	1828. 30 Aug.
Do	Secretary of State	29 May		do	380		
Goderich, Viscount	Darling, Governor	30 May	Circular		380	Darling, Governor	26 Feb.
Darling, Governor	Bathurst, Earl	30 May	Separate	Ship Australia	380	Murray, Sir George	30 Aug.
Do	Hay, Under Secretary	30 May	Private	do	386		
Do	do	30 May	Private	do	387		
Do	Bathurst, Earl	31 May	Separate	do	389	Huskisson, Right Hon. Wm.	1827. 31 Oct.
Goderich, Viscount	Darling, Governor	1 June	No. 6	Ship Cambridge	391	Darling, Governor	1 Oct. 1828.
Darling, Governor	Bathurst, Earl	1 June	Separate	Barque Faith	391	Murray, Sir George	30 Aug.
Do	do	4 June	No. 73	do	399		
Do	do	8 June	Separate	do	413		

From	To	Dated	Despatch endorsed	Transmitted per—	See page	Acknowledged by—	Date of acknow- ledgment.
Hay, Under Secretary.....	Darling, Governor	1827 10 June	.....	Shlp Florentia	417	Darling, Governor	1828 31 Jan.
Darling, Governor	Hay, Under Secretary ..	10 June	.....	Barque Faith	417	.....	.....
Hay, Under Secretary	Darling, Governor	11 June	No. 7	Shlp John	418	Darling, Governor	1827 4 Dec.
Goerlich, Viscount	do	12 June	No. 8	do	418	do	4 Dec.
Do	do	13 June	No. 9	do	418	do	4 Dec.
Do	do	14 June	No. 10	do	419	do	4 Dec.
Do	do	15 June	No. 11	do	419	do	4 Dec.
Do	do	16 June	No. 12	do	420	do	4 Dec.
Do	do	17 June	No. 13	do	420	do	4 Dec.
Do	do	18 June	No. 14	do	421	do	4 Dec.
Do	do	19 June	No. 15	do	421	do	4 Dec.
Do	do	20 June	No. 16	do	422	do	26 Dec.
Hay, Under Secretary	do	21 June	.....	do	422	do	4 Dec.
Horton, Under Secretary	do	22 June	.....	do	423	do	4 Dec.
Hay, Under Secretary	do	30 June	.....	do	424	do	4 Dec.
Do	do	30 June	.....	do	425	.....	.....
Do	do	30 June	.....	do	425	Darling, Governor	4 Dec.
Goerlich, Viscount	do	1 July	.....	do	426	do	1828.
Do	do	1 July	Circular	Shlp Woodlark	426	do	3 Sept
Do	do	1 July	Circular	do	426	do	1828.
Hay, Under Secretary	do	5 July	No. 17	Shlp John	427	do	31 Jan.
Do	do	5 July	.....	do	428	do	16 Feb.
Do	do	5 July	.....	do	429	do	1827.
Darling, Governor	Hay, Under Secretary	5 July	.....	Barque Faith	429	do	4 Dec.
Godrich, Viscount	Darling, Governor	6 July	No. 18	Shlp John	429	.....	10 Dec.
Hay, Under Secretary	do	6 July	.....	do	433	Darling, Governor	1828.
Goerlich, Viscount	do	7 July	No. 19	do	434	do	27 Mar.
Hay, Under Secretary	do	7 July	Private	do	435	do	1827.
Goerlich, Viscount	do	7 July	No. 20	do	435	do	4 Dec.
Do	do	10 July	No. 21	Shlp Woodlark	436	do	22 Dec
Do	do	10 July	No. 22	Shlp John	437	do	4 Dec.
Do	do	10 July	.....	.....	437	do	1828
Do	do	10 July	.....	.....	437	do	31 Jan
Do	do	10 July	.....	.....	437	do	1827
Do	do	10 July	.....	.....	437	do	4 Dec

From	To	Dated	Despatch endorsed	Transmitted per—	See page	Acknowledged by—	Date of acknow- ledgment.
Goderich, Viscount.....	Darling, Governor	1827. 10 July	No. 23.....	Ship John	438	Darling, Governor	1827. 4 D.c.
Do	do	11 July	No. 24.....	do	438	do	D.c.
Do	do	11 July	No. 25.....	do	439	do	4 D.c.
Do	do	11 July	No. 26.....	do	441	do	4 D.c.
Hay, Under Secretary.....	do	11 July	No. 27.....	do	441	do	4 D.c.
Goderich, Viscount.....	do	12 July	No. 28.....	do	443	do	4 Dec.
Do	do	12 July	No. 29.....	do	443	do	15 Dec.
Do	do	13 July	No. 30.....	do	444	do	4 Dec.
Hay, Under Secretary.....	do	13 July	Private.....	do	444	do	4 Dec.
Goderich, Viscount.....	do	4 July	No. 30.....	do	445	do	4 Dec.
Hay, Under Secretary.....	do	14 July	Private.....	do	445	Darling, Governor	4 Dec.
Do	do	14 July	No. 31.....	Ship Hoogley	446	Darling, Governor	14 D.c.
Goderich, Viscount.....	do	16 July	No. 31.....	Ship John	447	Darling, Governor	1828. 3 Aug.
Hay, Under Secretary.....	do	17 July	Private.....	do	447	do	1827.
Do	do	17 July	Private.....	do	448	do	4 Dec.
Do	do	18 July	Private.....	do	450	do	4 Dec.
Goderich, Viscount.....	do	19 July	No. 32.....	do	450	Darling, Governor	24 Dec.
Do	do	19 July	No. 33.....	do	451	do	4 D.c.
Do	do	20 July	No. 34.....	Ship Woodlark	452	do	1828.
Do	do	20 July	No. 35.....	Ship Florentia	455	do	31 Jan.
Do	do	20 July	No. 36.....	Shi Woodlark	455	do	31 Jan.
Do	do	20 July	No. 37.....	do	457	do	31 Jan.
Darling, Governor	Bathurst, Earl.....	21 July	No. 74.....	Barque Faith	458	do	31 Jan.
Do	do	23 July	No. 75.....	do	459	Huskisson, Right H. Wm.	24 Jan.
Do	do	24 July	No. 76.....	do	459	do	18 Jan.
Goderich, Viscount.....	Darling, Governor	25 July	No. 35.....	Ship Woodlark	460	Darling, Governor	25 eb.
Do	do	26 July	No. 36.....	do	461	do	31 Jan.
Do	do	27 July	No. 37.....	do	462	do	31 Jan.
Do	do	27 July	No. 38.....	do	462	do	31 Jan.
Do	do	27 July	No. 39.....	do	464	do	31 Jan.
Do	do	27 July	No. 40.....	do	464	do	13 ar.
Hay, Under Secretary.....	do	28 July	No. 40.....	do	465	do	31 Jan.
Goderich, Viscount.....	do	28 July	No. 40.....	do	465	do	31 Jan.
Do	do	28 July	No. 40.....	do	467	do	.....

From	To	Dated	Despatch endorsed	Transmitted per—	See page	Acknowledged by—	Date of acknow- ledgment.
Hay, Under Secretary	Darling, Governor	1827.	No. 77	Barque Faith	67	.....	1828.
Darling, Governor	Bathurst, Earl	28 July	.....	do	467	.....	.....
Do	Hay, Under Secretary	28 July	.....	do	468	.....	.....
Do	do	29 July	.....	do	469	.....	.....
Goderich, Viscount	Darling, Governor	30 July	No. 41	Ship Florentia	470	Darling, Governor	8 Jan.
Hay, Under Secretary	do	30 July	.....	do	473	do	31 Jan.
Darling, Governor	Hay, Under Secretary	30 July	.....	Barque Faith	475	do	31 Mar.
Goderich, Viscount	Darling, Governor	31 July	No. 42	Ship Woolark	476	do	31 Jan.
Hay, Under Secretary	do	31 July	.....	do	477	.....	.....
Darling, Governor	Harrison, Secretary	31 July	.....	Barque Faith	477	.....	.....
Do	Hay, Under Secretary	1 Aug.	.....	do	477	.....	.....
Hay, Under Secretary	Darling, Governor	2 Aug.	No. 78	Ship Florentia	484	.....	.....
Darling, Governor	Bathurst, Earl	2 Aug.	.....	Barque Faith	484	.....	.....
Do	Hay, Under Secretary	2 Aug.	.....	do	484	.....	.....
Goderich, Viscount	Darling, Governor	3 Aug.	No. 43	Ship Florentia	485	Darling Governor	31 Jan.
Do	do	3 Aug.	No. 44	do	486	do	31 Jan.
Darling, Governor	Bathurst, Earl	3 Aug.	No. 79	Barque Faith	487	Murray, Sir George	1827.
Goderich, Viscount	Darling, Governor	4 Aug.	No. 45	Ship Florentia	490	Darling, Governor	30 Aug.
Darling, Governor	Bathurst, Earl	4 Aug.	No. 80	Barque Faith	490	.....	1828.
Do	do	4 Aug.	No. 81	do	490	Huskisson, Right Hon.	31 Jan.
Do	do	4 Aug.	No. 82	do	492	Wm.	24 Jan.
Do	Secretary of State	4 Aug.	.....	do	492	.....	.....
Do	Hay, Under Secretary	4 Aug.	Private	do	492	.....	.....
Goderich, Viscount	Darling, Governor	5 Aug.	No. 46	Ship Florentia	493	.....	.....
Do	do	6 Aug.	No. 47	do	494	Darling, Governor	31 Jan.
Darling, Governor	Bathurst, Earl	6 Aug.	No. 83	Ship Elisabeth	494	do	31 Jan.
Hay, Under Secretary	Darling, Governor	7 Aug.	.....	Ship Florentia	495	Darling, Governor	31 Jan.
Darling, Governor	Bathurst, Earl	7 Aug.	No. 84	Ship Elisabeth	496	Huskisson, Right Hon.	28 April.
Hay, Under Secretary	Darling, Governor	9 Aug.	.....	Ship Florentia	497	Wm.	15 F. b.
Do	do	10 Aug.	.....	do	498	Darling, Governor	31 Jan.
Darling, Governor	Goderich, Viscount	10 Aug.	No. 85	Ship Elisabeth	499	do	.....
Do	Secretary of State	10 Aug.	.....	do	502	.....	.....
Do	Hay, Under Secretary	10 Aug.	.....	do	503	.....	.....
Do	do	10 Aug.	.....	do	503	.....	.....
Do	do	13 Aug.	.....	do	503	Huskisson, Right Hon.	29 April.
Do	do	.....	.....	do	503	Wm.	.....

From	To	Dated	Despatch endorsed	Transmitted per—	See page	Acknowledged by—	Date of acknow- ledgment.
Darling, Governor	Hay, Under Secretary	1827. 16 Aug.	.....	Ship Elisabeth	504	Darling, Governor .....	..... 1827.
Hay, Under Secretary	Darling, Governor	22 Aug.	.....	Ship Louisa	504	do	4 D.c. 1828.
Goderich, Viscount	do	23 Aug.	No. 48	Ship Hoogley	505	do	26 F.b.
Hay, Under Secretary	do	23 Aug.	.....	.....	505	.....	.....
Horton, Under Secretary	do	23 Aug.	.....	.....	506	.....	.....
Goderich, Viscount	do	2 Sept.	No. 49	Ship Hoogley	506	Darling, Governor	26 F.b.
Hay, Under Secretary	do	2 Sept.	.....	do	507	do	26 F.b.
Huskisson, Right Hon. Wm.	do	3 Sept.	Circular	do	508	do	26 F.b.
do	do	8 Sept.	Circular	do	508	do	26 Feb.
Darling, Governor	Goderich, Viscount	10 Sept.	Separate	Ship Elisabeth	509	.....	.....
Horton, Under Secretary	Darling, Governor	13 Sept.	.....	.....	515	.....	.....
Do	do	14 Sept.	.....	Ship Asia	515	Darling, Governor	14 Sept.
do	do	19 Sept.	.....	.....	515	.....	.....
Huskisson, Right Hon. Wm.	do	20 Sept.	No. 1	Ship Hoogley	516	Darling, Governor	26 F.b.
Darling, Governor	Goderich, Viscount	20 Sept.	No. 86	Ship Elisabeth	516	.....	.....
Huskisson, Right Hon. Wm.	Darling, Governor	21 Sept.	No. 2	Ship Hoogley	516	Darling, Governor	26 F.b.
Darling, Governor	Goderich, Viscount	21 Sept.	No. 87	Ship Elisabeth	517	Murray, Sir George	28 Sept.
Do	do	22 Sept.	No. 88	do	518	Huskisson, Right Hon. Wm.	15 May.
Do	do	23 Sept.	No. 89	do	519	do	16 May.
Do	do	24 Sept.	No. 90	do	519	.....	.....
Do	do	25 Sept.	No. 91	do	521	Huskisson, Right Hon. Wm.	17 May.
Do	do	26 Sept.	No. 92	do	522	Murray, Sir George	26 Nov.
Do	do	27 Sept.	No. 93	do	525	Huskisson, Right Hon. Wm.	18 May.
Do	do	30 Sept.	No. 94	do	529	Murray, Sir George	31 May.
Do	Hay, Under Secretary	30 Sept.	.....	do	530	.....	.....
Do	do	30 Sept.	.....	do	530	Twiss, Under Secretary	3 Aug.
Do	Barnard, Esq.	30 Sept.	.....	do	531	.....	.....
Huskisson, Right Hon. Wm.	Darling, Governor	1 Oct.	No. 3	Ship Hoogley	531	Darling, Governor	26 F.b.
Darling, Governor	Goderich, Viscount	1 Oct.	No. 95	Ship Elisabeth	531	Murray, Sir George	31 May.

From	To	Dated	Despatch endorsed	Transmitted per—	See page	Acknowledged by—	Date of acknow- ledgment.
Darling, Governor	Hay, Under Secretary	1827.	.....	Ship Elisabeth	533	.....	1828.
Do	Commissioners of Navy	1 Oct.	.....	do	533	.....	.....
Do	Barnard, E.	1 Oct.	.....	do	533	.....	.....
Do	do	1 Oct.	.....	do	534	.....	.....
Do	Goderich, Viscount	2 Oct.	No. 96	do	534	Murray, Sir George	31 May.
Do	do	3 Oct.	No. 97	do	535	.....	.....
Do	do	4 Oct.	No. 98	do	536	Murray, Sir George	3 June.
Do	do	5 Oct.	No. 99	do	537	.....	.....
Do	do	6 Oct.	No. 100	do	544	.....	.....
Do	do	8 Oct.	No. 101	do	545	.....	.....
Do	do	9 Oct.	No. 102	do	546	Murray, Sir George	4 June.
Do	do	10 Oct.	No. 103	do	546	.....	.....
Do	do	10 Oct.	Separate	do	547	Murray, Sir George	30 Aug.
Do	do	11 Oct.	No. 104	do	548	.....	.....
Do	do	12 Oct.	No. 105	do	549	.....	.....
Do	do	13 Oct.	No. 106	do	549	Murray, Sir George	31 May.
Do	Darling, Governor	15 Oct.	Separate	Ship Mermaid	551	Darling, Governor	30 July.
Huskisson, Right Hon. Wm.	do	15 Oct.	.....	Ship Hoogley	552	do	26 Feb.
Horton, Under Secretary	do	20 Oct.	.....	do	553	do	25 Feb.
Do	do	20 Oct.	.....	Ship Asia	554	do	25 May.
Darling, Governor	Goderich, Viscount	22 Oct.	No. 107	Ship Elisabeth	560	.....	.....
Do	do	23 Oct.	No. 108	do	561	Huskisson, Right Hon. Wm.	19 May.
Do	Hay, Under Secretary	25 Oct.	.....	do	563	.....	.....
Do	Goderich, Viscount	26 Oct.	No. 109	do	563	Huskisson, Right Hon. Wm.	21 May
Do	do	27 Oct.	No. 110	do	564	Murray, Sir George	31 May.
Do	Hay, Under Secretary	27 Oct.	Private	do	565	.....	.....
Do	do	29 Oct.	Private	do	567	Murray, Sir George	31 May.
Do	do	30 Oct.	Separate	do	568	.....	.....
Do	do	31 Oct.	No. 4	do	573	Murray, Sir George	27 July.
Huskisson, Right Hon. Wm.	Darling, Governor	31 Oct.	.....	Ship Hoogley	581	Darling, Governor	26 Feb.
Do	do	31 Oct.	No. 5	do	582	do	26 Feb.
Darling, Governor	Hay, Under Secretary	31 Oct.	.....	Ship Elisabeth	584	.....	.....
Do	Barnard, E.	31 Oct.	.....	do	584	.....	.....

From	To	Dated	Despatch endorsed	Transmitted per—	See page	Acknowledged by—	Date of acknow- ledgment.
Darling, Governor	Goderich, Viscount	1827. 1 Nov.	No. 111	Ship Elisabeth	585	Huskisson, Right Hon. Wm.	1828. 22 May.
Do	Hay, Under Secretary	1 Nov.	No. 112	do	585	Huskisson, Right Hon.	23 May.
Do	Goderich, Viscount	2 Nov.	No. 112	do	587	Huskisson, Right Hon. Wm.	
Do	Hay, Under Secretary	2 Nov.	Private	do	588	Darling, Governor	15 Mar.
Hay, Under Secretary	Darling, Governor	3 Nov.	No. 113	Ship Asia	589	Gower, Under Secretary	24 May.
Darling, Governor	Goderich, Viscount	3 Nov.	Private	do	590	Darling, Governor	15 Mar.
Do	Hay, Under Secretary	3 Nov.	No. 6	Ship Asia	592		
Huskisson, Right Hon. Wm.	Darling, Governor	4 Nov.	No. 114	Ship Elisabeth	592		
Darling, Governor	Goderich, Viscount	4 Nov.	No. 114	do	593		
Do	Commissioners of Navy	5 Nov.	No. 115	Ship Elisabeth	593		
Hay, Under Secretary	Darling, Governor	5 Nov.	No. 7	Ship Asia	595	Darling, Governor	15 Mar.
Darling, Governor	Goderich, Viscount	6 Nov.	No. 116	do	597	Huskisson, Right Hon. Wm.	15 Mar.
Huskisson, Right Hon.	Darling, Governor	6 Nov.	No. 8	Ship Elisabeth	598		
Do	Hill, W.	7 Nov.	No. 9	do	602	Darling, Governor	15 Mar.
Wm.	Darling, Governor	7 Nov.	No. 10	do	603		
Darling, Governor	Goderich, Viscount	7 Nov.	No. 11	Ship Elisabeth	603	do	15 Mar.
Huskisson, Right Hon.	Darling, Governor	8 Nov.	No. 12	Ship Asia	604	Darling, Governor	18 Mar.
Wm.	Goderich, Viscount	8 Nov.	o. 11	do	604	do	15 Mar.
Darling, Governor	Darling, Governor	9 Nov.	Separate	Ship Elisabeth	604	Darling, Governor	15 Mar.
Huskisson, Right Hon.	do	9 Nov.	No. 13	do	613		
Do	do	10 Nov.	No. 14	do	614	do	15 Mar.
Do	do	10 Nov.	No. 15	do	615	do	28 Mar.
Do	Hay, Under Secretary	10 Nov.	No. 16	Ship Elisabeth	616	do	15 Mar.
Darling, Governor	Darling, Governor	11 Nov.	No. 17	Ship Asia	617	Darling, Governor	15 Mar.
Huskisson, Right Hon. Wm.	do	12 Nov.	No. 17	do	618	do	15 Mar.

From	To	Dated	Despatch endorsed	Transmitted per—	See page	Acknowledged by—	Date of acknow- ledgment.
Darling, Governor	Goderich, Viscount	1827. 12 Nov.	No. 118	Ship Elisabeth	618	Huskisson, Right Hon. Wm.	1828. 26 May.
Do	do	12 Nov.	No. 119	do	618	.....	.....
Hay, Under Secretary	Darling, Governor	13 Nov.	.....	Ship Asia	620	Darling, Governor	15 Mar.
Do	do	13 Nov.	.....	do	620	do	15 Mar.
Do	do	14 Nov.	.....	do	621	do	1 Mar.
Do	do	14 Nov.	.....	do	621	do	15 Mar.
Huskisson, Right Hon. Wm.	do	15 Nov.	No. 18	do	622	do	15 Mar.
Darling, Governor	Goderich, Viscount	20 Nov.	No. 120	Ship Ephemia	622	Murray, Sir George	30 Aug.
Stanley, Under Secretary	Darling, Governor	24 Nov.	.....	.....	625	.....	.....
Huskisson, Right Hon. Wm.	do	29 Nov.	No. 19	Ship Mermaid	625	Darling, Governor	30 July.
Stanley, Under Secretary	do	29 Nov.	No. 20 .....	.....	626	.....	.....
Huskisson, Right Hon. Wm.	do	30 Nov.	.....	Ship Mermaid	627	Darling, Governor	30 July.
Stanley, Under Secretary	do	30 Nov.	.....	.....	627	do	1829. 30 Jan.
Darling, Governor	Hay, Under Secretary	1 Dec.	.....	Ship Ephemia	630	.....	.....
Do	do	4 Dec.	.....	do	630	.....	.....
Stanley, Under Secretary	Darling, Governor	5 Dec.	.....	Ship Mermaid	630	Darling, Governor	1828. 30 July.
Do	do	6 Dec.	.....	do	630	do	30 July.
Do	do	7 Dec.	.....	do	630	do	30 July.
Darling, Governor	Hay, Under Secretary	10 Dec.	.....	Ship Ephemia	634	.....	.....
Do	Goderich, Viscount	11 Dec.	No. 121	do	634	Murray, Sir George	13 Dec.
Do	Hay, Under Secretary	11 Dec.	Private	do	637	.....	.....
Do	Barnard, E.	12 Dec.	.....	do	637	.....	.....
Stanley, Under Secretary	Darling, Governor	13 Dec.	.....	.....	637	.....	.....
Darling, Governor	Goderich, Viscount	14 Dec.	No. 122	Ship Ephemia	638	Murray, Sir George	30 Aug.
Do	do	14 Dec.	No. 123	do	642	do	30 Aug.
Stanley, Under Secretary	Darling, Governor	15 Dec.	.....	Ship Wave	646	.....	.....
Darling, Governor	Goderich, Viscount	15 Dec.	No. 124	Ship Ephemia	647	Murray, Sir George	30 Aug.
Do	do	15 Dec.	No. 125	do	648	do	27 June.
Do	Hay, Under Secretary	15 Dec.	Private	do	648	.....	.....
Do	do	16 Dec.	Private	do	649	.....	.....
Do	Stephen, James	16 Dec.	.....	do	650	.....	.....

From	To	Dated	Despatch endorsed	Transmitted per—	See page	Acknowledged by—	Date of acknow- ledgment.
Darling, Governor	Goderich, Viscount	1827. 17 Dec.	No. 126	Ship Ephemia	652	Murray, Sir George	1828. 22 June.
Do	Hay, Under Secretary	17 Dec.	.....	do	652	.....	.....
Do	Goderich, Viscount	19 Dec.	No. 127	do	658	Murray, Sir George	28 June.
Do	do	21 Dec.	No. 128	Ship Elisabeth	658	do	7 Aug.
Do	Hay, Under Secretary	21 Dec.	.....	do	659	.....	.....
Do	Goderich, Viscount	22 Dec.	No. 129	do	660	.....	.....
Do	Hay, Under Secretary	22 Dec.	.....	do	662	.....	.....
Do	do	22 Dec.	.....	do	664	.....	.....
Do	Goderich, Viscount	23 Dec.	No. 130	do	664	.....	.....
Do	do	24 Dec.	No. 131	do	667	.....	.....
Huskisson, Right Hon.	Darling, Governor	26 Dec.	No. 21	Ship Mermald	668	Darling, Governor	30 July.
Do	do	26 Dec.	No. 22	do	668	do	30 July.
Do	do	26 Dec.	.....	.....	669	.....	.....
Stanley, Under Secretary	Goderich, Viscount	26 Dec.	No. 132	Ship Elisabeth	670	.....	.....
Darling, Governor	Darling, Governor	27 Dec.	No. 23	Ship Mermald	671	Darling, Governor	30 July.
Huskisson, Right Hon.	.....	.....	.....	.....	.....	.....	.....
Do	do	29 Dec.	Circular	do	671	do	12 Nov.
Stanley, Under Secretary	do	30 Dec.	.....	do	671	do	14 July.
Huskisson, Right Hon.	do	31 Dec.	Circular	Ship Phoenix	672	do	30 July.
Do	Goderich, Viscount	31 Dec.	No. 133	Ship Elisabeth	672	.....	.....
Darling, Governor	do	31 Dec.	No. 134	do	677	Murray, Sir George	10 Sept.
Do	.....	1828.	.....	.....	.....	.....	.....
Do	do	2 Jan.	No. 1	do	677	.....	.....
Do	do	3 Jan.	No. 2	do	677	.....	.....
Do	do	4 Jan.	No. 3	do	678	.....	.....
Do	do	5 Jan.	No. 4	do	678	.....	.....
Do	do	7 Jan.	No. 5	do	679	Murray, Sir George	9 Sept.
Do	do	.....	Circular	Ship Mermald	685	.....	.....
Huskisson, Right Hon.	Darling, Governor	8 Jan.	No. 6	Ship Elisabeth	685	.....	.....
Do	Goderich, Viscount	8 Jan.	.....	.....	690	.....	.....
Darling, Governor	Darling, Governor	9 Jan.	.....	.....	690	.....	.....
Stanley, Under Secretary	do	9 Jan.	.....	Ship Mermald	690	Darling, Governor	21 Dec.
Do	do	10 Jan.	.....	Ship Elisabeth	691	.....	.....
Darling, Governor	Hay, Under Secretary	10 Jan.	Private	do	692	Murray, Sir George	30 Aug.
Do	do	10 Jan.	.....	.....	.....	.....	.....

From	To	Dated	Despatch endorsed	Transmitted per—	See page	Acknowledged by—	Date of acknowledgment.
Hay, Under Secretary	Darling, Governor	1828.		Ship Mermaid	695		1828.
Darling, Governor	Goderich, Viscount	12 Jan.	No. 7	Ship Elisabeth	696		
Do	do	14 Jan.	No. 8	do	700	Murray, Sir George	30 Aug.
Hay, Under Secretary	Darling, Governor	15 Jan.			703		
Darling, Governor	Goderich, Viscount	15 Jan.	No. 9	Ship Elisabeth	706	Murray, Sir George	30 Aug.
Do	Hay, Under Secretary	15 Jan.	Private	do	712	do	30 Aug.
Hay, Under Secretary	Darling, Governor	16 Jan.		Ship Mermaid	713		
Do	do	16 Jan.		do	713	Darling, Governor	31 July.
Darling, Governor	Goderich, Viscount	16 Jan.	No. 10	Ship Elisabeth	717	Murray, Sir George	30 Aug.
Huskisson, Right Hon.	Darling, Governor	17 Jan.	No. 1	Ship Mermaid	725	Darling, Governor	6 Aug.
Wm							
Do	do	18 Jan.	No. 2	do	727		
Darling, Governor	Hay, Under Secretary	19 Jan.	Private	Ship Elisabeth	727	Murray, Sir George	30 Aug.
Huskisson, Right Hon.	Darling, Governor	20 Jan.	No. 7	Ship Mermaid	734		
Wm.							
Do.	do	23 Jan.	No. 3	do	735		
Do	do	24 Jan.	No. 4	do	735		
Do	do	24 Jan.	No. 5	do	735		
Darling, Governor	Goderich, Viscount	24 Jan.	No. 6	Ship Elisabeth	736	Murray, Sir George	8 Sept.
Huskisson, Right Hon.	Darling, Governor	28 Jan.	No. 11	Ship Mermaid	739		
Wm.							
Do	do	30 Jan.	No. 8	do	740	Darling, Governor	15 Aug.
Do	do	30 Jan.	No. 9	do	741		
Do	do	30 Jan.	No. 10	do	742	Darling, Governor	30 Aug.
Darling, Governor	Goderich, Viscount	30 Jan.	No. 12	Ship Elisabeth	743	Murray, Sir George	30 Aug.
Do	Hay, Under Secretary	31 Jan.		do	747		
Do	do	31 Jan.		do	747		
Do	Goderich, Viscount	1 Feb.	No. 13	do	748		
Huskisson, Right Hon.	Darling, Governor	7 Feb.	No. 11	Ship Mermaid	762		
Wm.							
Do	do	8 Feb.	No. 12	do	762		
Do	do	9 Feb.	No. 13	do	763		
Darling, Governor	Goderich, Viscount	9 Feb.	No. 14	Ship Elisabeth	763		
Do	Hay, Under Secretary	9 Feb.		do	767		
Huskisson, Right Hon.	Darling, Governor	10 Feb.	No. 14	Ship Mermaid	767	Darling, Governor	12 Aug.
Wm.							
Do	do	11 Feb.	No. 15	do	768	do	30 July.

From	To	Dated	Despatch endorsed	Transmitted per—	See page	Acknowledged by—	Date of acknowledgment.
Huskisson, Right Hon	Darling, Governor	1828. 11 Feb.	Separate	Ship Mermaid	770	Darling, Governor	1828. 30 July.
Wm.							
Darling, Governor	Goderich, Viscount	11 Feb.	No. 15	Ship Elisabeth	771		
Hay, Under Secretary	Darling, Governor	12 Feb.			779	Darling, Governor	20 Aug.
Gower, Under Secretary	do	13 Feb.		Ship Mermaid	780	do	29 Aug.
Do	do	14 Feb.		do	780	Murray, Sir George	11 Nov.
Darling, Governor	Goderich, Viscount	14 Feb.	No. 16	Ship Elisabeth	781		
Gower, Under Secretary	Darling, Governor	15 Feb.		Ship Mermaid	782	Murray, Sir George	30 Aug.
Darling, Governor	Goderich, Viscount	15 Feb.	No. 17	Ship Elisabeth	782		
Do	Hay, Under Secretary	15 Feb.		do	784	Murray, Sir George	30 Aug.
Do	do	15 Feb.		do	786		
Do	Goderich, Viscount	16 Feb.	No. 18	do	786		
Do	Huskisson, Right Hon.	16 Feb.		do			
Do	Wm.			do	787	Murray, Sir George	30 Aug.
Do	Hay, Under Secretary	16 Feb.		do	789		
Do	do	16 Feb.		do	789	Darling, Governor	7 Aug.
Huskisson, Right Hon.	Darling, Governor	17 Feb.	No. 16	Ship Phoenix			
Wm.							
Darling, Governor	Goderich, Viscount	18 Feb.	No. 19	Ship Orella	791		
Huskisson, Right Hon.	Huskisson, Right Hon.	20 Feb.	No. 20	do	792		
Wm.							
Darling, Governor	Hay, Under Secretary	20 Feb.		do	792		
Do	Huskisson, Right Hon.	25 Feb.	No. 21	do	793		
Do	Wm.						
Do	do	25 Feb.	No. 22	do	793		
Do	do	25 Feb.	No. 23	do	797		
Do	Hay, Under Secretary	25 Feb.		do	797		
Do	do	25 Feb.		do	799		
Do	do	25 Feb.		do	802		
Do	Adjutant-General	25 Feb.		do			
Do	Huskisson, Right Hon.	26 Feb.	No. 24	do			
Do	Wm.						
Do	do	26 Feb.	Separate	do	802	Murray, Sir George	30 Aug.
Do	do	26 Feb.		do	812	do	30 Aug.
Do	Hay, Under Secretary	26 Feb.		do	814		
Do	do	26 Feb.		do	814		
Do	Huskisson, Right Hon.	28 Feb.	Private	do	815	Murray, Sir George	30 Aug.
Do	Wm.						

INDEX.

Abbott, John (assist. surveyor)

application from, for employment in Tasmania, 235, 236.
appointment of, 161.
letter from, to Hay, R. W., 235.
salary and allowances of, 666.

Aborigines

amendment of government notice *re*, 118.
depredations by, at Hunter river, 177.
grants of land to missions to, 14, 15, 107
et seq.
murders by, at Melville island, 794.
problem of civilising, 433.
shooting of native by mounted police at Wallis plains, 179, 317, 399 *et seq.*

Acland, Sir Thomas Dyke

correspondence with, *re* Ellis, 178.

Acts of council

transmission of, 318, 418, 592.

Acts of English parliament

See "Statutes, English."

Adjutant-general

letter to, from Darling, Governor, 799.

Alderson, Adam Abel and James

request for land grants for, 425.

Allen (Allan), Thomas B. (assist. surgeon)

recommendation of, for promotion, 264.

Alligator, schooner

purchase of, by government, 550.
tonnage of, 550.

Amity, brig

damage received by, on voyage to King George's sound, 273.
departure of, with expedition for King George's sound, 73.
property of government, 304.
tonnage of, 550

Anderson, Matthew (assist. surgeon)

evidence of, in suit Broadbear, R., and wife, *v.* Macarthur, Jas., and *ors.*, 347.
recommendation of, for promotion, 264.

Andromeda, ship

arrival of, expected, 111.

Ann, brig

inability of, to find settlement at Raffles bay, 795.
shipment of provisions to Raffles bay on, 530.

Antill, Henry Colden

magistrate, 59.

Apothecary

proposal for appointment of, 37, 767.

Archdeacon

See also "Scott, Thomas Hobbes."
exclusion of, proposed from executive and legislative councils, 102.

Architect

commission allowed to, 528.
removal of Cookney, G., from position of, 525 *et seq.*
report by board on office of, 528.

Argyle

appointment of surveyor of road to, 268.
magistrates for district of, 325.

Armsden (Amsden or Armaden), Thomas

advances to, to be repaid, 36, 37.
repayment of advances by, 659, 660.

Armstrong, John

claim of McLellan, J., for clothes supplied to, 424.

Arthur, George (lieut.-governor)

assignment of convicts questioned by, 115, 116.
bill for regulation of press proposed by, 207, 261, 277.
instructions to, *re* keeping of accounts, 495.
letter—
from, to Darling, Governor, 126, 495
to, from Travers, R., 126.
opposition to, 190.
proposal by, to disband veteran companies, 87.
recall of, anticipated, 190.

Asia, ship

convicts *per*, 1.
 despatch *per*, 554, 589, 592, 595, 597, 603,
 604, 613, 614, 615, 617, 618, 620,
 621, 622.

Aspinall, Edward

steward of turf club, 642.
 withdrawal of, from dinner of turf club,
 642.

Assembly, legislative

acknowledgment of petition for, 443.
 colony unsuited for, 99.
 indifference of public about, 99.
 objections to, 657.
 persons eligible for, 51, 56.
 petition to H.M. the King for granting of,
 51 *et seq.*, 96 *et seq.*
 support for, anticipated, 97.

Astronomy

See also "Observatory."

appointment of government astronomer, 678.
 transmission of astronomical papers, 16,
 563.

Attorney-general

See also "Bannister, Saxe"; "Baxter,
 Alexander Macduff."
 assistance provided for, 486, 487.
 decision *re* status of, 514.
 duties and powers of, 478, 481, 482.
 salary of, 780, 781.

Auditor, colonial

duties of, 250.
 expenditure on account of, 472, 540, 688.
 instructions to, *re* custody of public trea-
 sure, 520, 521.
 office accommodation provided for, 460, 727.
 separation of office of military accounts
 from, 249.

Australia

proposals for exploration of interior of, 554
et seq.
 speculations *re* interior of, 557 *et seq.*
 use of money proposed on official buttons,
 584.

Australia, bank of

See "Bank of Australia."

Australia, ship

despatch *per*, 218, 231, 233, 236, 237,
 239, 240, 242, 244, 245, 246, 247,
 249, 250, 251, 254, 259, 264, 266,
 267, 268, 269, 270, 271, 272, 274,
 277, 287, 289, 297, 300, 301, 304,
 306, 307, 308, 311, 315, 317, 318,
 361, 362, 371, 372, 374, 380, 386,
 387, 389.

Australian agricultural company

application from, for special convicts, 309.
 convicts assigned to, 673.
 land granted to, resumed from F. Shortt,
 W. Cromarty, and Moon, 38 *et seq.*,
 438, 439.
 monopoly of coal by, alleged in *Monitor*
 newspaper, 184.

"Australian" (newspaper)

advocacy of cause of convicts in, 140.
 circulation of, 395.
 criticism in—
 of government measures, 80, 81.
 of complaint of Scott, T. H., against
 Stephen, J., 318, 319.
 of proposed stamp duty on newspapers,
 375.
 influence of, over convicts, 188, 259.
 information supplied to, by judges, 207,
 208, 261, 318, 319, 517.
 interference of Darling, R., in law courts
 alleged in, 429.
 mis-statements in, 98.
 opposition to Arthur, G., in, 190.
 policy of, 101.
 prosecution of—
 for libel on Carter, W., 100, 429 *et seq.*,
 477 *et seq.*
 for libel on government, 719, 723, 724.
 for libel on Moore, W. H., 82.
 remarks in, *re* decision of Stephen, J., on
 status of convicts, 206, 259.
 transmission of series of, 503.

Australian trading company

application from, for warehouse site at
 Sydney, 553, 554, 797.
 formation of, 553.

Bailey, —

voting by, on resolutions of turf club, 643.

Bailey, J.

proposal from A.A. company *re* family of,
 309, 310.

Bailey, Samuel

proposal from A.A. company *re* family of,
 309, 310.

Balcombe, William (col. treasurer)

magistrate, 59.
 voting by, on resolutions of turf club, 643.
 warrant to, for payment of wages of female
 orphan school, 352, 353.

Balfour, W. (lt.-colonel)

claim of, for expenses in carrying des-
 patches, 428, 634.
 letter from, to Hay, R. W., 428.

Ball, W. (lieut., N.S.W. corps)

magistrate, 59.

Ballantine, James

letter—

from, to Huskisson, W., 555.

to, from Horton, R. W., 560.

proposals from, for exploration of interior of Australia, 554 *et seq.*

Bank of Australia

officials forbidden to act as directors of, 520.

public funds lodged in, 520.

Bank of New South Wales

approval of assistance granted to, 519.

excessive credits granted by, 257, 258.

financial embarrassment caused by, 257, 258.

nomination of Lithgow, W., as director of, 520.

public funds lodged in, 520.

repayment by, of loan from government, 128.

Bannister, Saxe

departure of, for England, 199.

instructions given by, in prosecution of Broadbear, R., and wife, 354.

land grant to, 6.

opinion of, *re* control of governor over convicts, 188.

refusal of Darling, R., to prosecute for libel on, 419.

Bargin, James

master of ship *Midas*, 218.

misconduct of, 218.

Barlow, James

letter—

from, to Hay, R. W., 507.

to, from Hay, R. W., 507.

Barlow, Maurice (capt., 3rd regt.)

application for confirmation of land grant to, 507.

Barnard, Edward (colonial agent)

letter to, from Darling, Governor, 72, 88, 102, 531, 533, 534, 584, 637.

payment of bills by, 142.

remittance to, 88.

Barnes, —

conduct of, at Melville island, 796.

settlement of N. Australia proposed by, 796.

Barrack master

dismissal of King, E., from office of, 421.

expenditure on account of, 541, 688.

Barrack square

location of finance offices in, 459, 460, 727.

Barrow, John

letter from—

to Hay, R. W., 763.

to Stanley, E. G., 669.

Bateman, William

death sentence passed on, for piracy, 157.

Bateman's bay

application to select land at, 128.

Bates, — (lieutenant)

ill-health of, 797.

Bathurst

appointment of surveyor of road to, 263.

commandant at, 33, 34.

convicts victualled by government at, 305.

discovery of overland route from, to New-castle, 33.

government reserves at, to be thrown open, 228.

reduction of agricultural establishment at, 661.

return of government live stock at, 662.

sale of crown live stock at, 661.

stipendiary magistrate appointed at, 670.

troops stationed at, 276.

Bathurst, Earl

appointment of successor to, 270.

instructions by, *re* assignment of convicts, 606.

letter from—

to Darling, Governor, 1, 13, 14, 17, 35, 62, 115, 117, 118, 141, 164, 165, 175, 176, 177, 210, 211, 212, 214,

215, 216, 217, 218, 219, 230, 232,

234, 238, 242, 257.

to Goulburn, H., 49, 442.

letter to—

from Bligh, R., 18.

from Cape, W., 238.

from Coates, D., 107.

from Crawford, R., 43.

from Darling, Governor, 2, 5, 8, 14, 15,

16, 23, 38, 43, 50, 62, 67, 73, 75,

76, 83, 84, 88, 103, 110, 111, 112,

113, 114, 118, 119, 122, 125, 128,

129, 130, 134, 135, 141, 148, 149,

156, 158, 162, 166, 168, 176, 177,

236, 239, 240, 242, 244, 245, 246,

247, 249, 251, 254, 259, 264, 266,

268, 269, 270, 271, 272, 274, 277,

287, 289, 297, 300, 304, 308, 311,

315, 318, 362, 372, 374, 380, 389,

391, 399, 413, 458, 459, 467, 484,

487, 490, 492, 495, 496.

Bathurst, Earl

- letter to—
 - from Forbes, F., 289.
 - from Halloran, L. H., 68.
 - from Holland, J., 197.
 - from Phillips, M., 132, 466.
 - from Shortt, F., 38.
 - from Sloper, J., 32.
 - from Stirling, J., 307.
- memorial to—
 - from Cahnac, Henry H. T., 628.
 - from Cookney, G., 526.
 - from Hassall, J., 715.
 - from Lawson, W., 32.
 - from Macarthur, J. and W., 9.
 - from Walker, W., 714.
- opinion of, of state of colony, 587.

Baxter, Alexander Macduff (attorney-general)

- arrival of, 492.
- difficulties to be encountered by, 82.
- incapacity of, as attorney-general, 565, 693, 694.
- letter—
 - from, to Darling, Governor, 612, 623, 636, 723, 781.
 - of introduction for, 239.
 - to, from Darling, Governor, 635.
- opinion of—
 - re* appointment of successor to lieutenant-governor on executive council, 636.
 - re* failure of trial of Wardell, R., for libel, 719, 723, 724.
 - re* regulations for assignment of convicts, 612.
 - re* validity of tickets of leave, 623 *et seq.*
- salary of, 780, 781.

Bayley, Thomas

- death sentence passed on, for piracy, 157.

Beacher, Henry Owen

- recommendation of, as settler, 515.

Bean, W.

- magistrate, 59.

Beauvais, Alexander

- employment of, 469.
- insanity of, 469.

Bench of magistrates

- appointment as chairman of, 678.
- inquiry by, at Wallis plains *re* shooting of native, 407 *et seq.*
- opinion of Forbes, F., *re* control of, over assigned servants, 489.

Bench of magistrates

- proceedings against Broadbear, R., and wife before, 326, 327.
- report on proceedings against Broadbear, R., and wife before, 354 *et seq.*
- trial of Cogill, J., for smuggling by, 458.

Benevolent asylum

- expenditure on account of, 541, 689.

Berry, Alexander

- confirmation of land grant to, 427.
- magistrate, 59, 175.

Bettington, John, Sons & Co.

- memorial of, 474.
- recommendation of, for land grant, 473.

Blaxland, Gregory

- letter to, from Darling, Governor, 58.
- magistrate, 59.
- petition from colonists presented by, 50, 57, 58.

Blaxland, John

- claims for compensation from government made by, 573 *et seq.*
- compensation proposed by, 581.
- land grant to—
 - at Cowpastures, 580.
 - at Sydney, 573, 577, 578, 580.
- letter from, to Darling, Governor, 581.

Bligh, Richard

- claims made by, to land grant at Parramatta, 17 *et seq.*
- letter from—
 - to Bathurst, Earl, 18.
 - to Hay, R. W., 21.
- letter to—
 - from Hay, R. W., 19, 22.

Bligh, William (admiral)

- death of, 18.
- illegality of land grant to, 19.
- land grant to, at Parramatta, 17 *et seq.*, 560, 561.
- report by Oxley, J., *re* land granted to, 561.

Blue, William

- claim of, against Mathew, D. D., for ferry charges, 312, 313, 314.

Boardman, Thomas

- evidence of, at inquiry *re* shooting of native, 409.
- statements by, *re* shooting of native at Wallis plains, 403.
- witness required at inquiry, 407.

Bolton, Robert

conviction of, for manslaughter, 598 *et seq.*
 death of, 598.
 memorial of, to Wellesley, Marquis, 598.

Botany

shipment of seeds and plants, 426.

Bowen, G. M. (lieut., 39th regt.)

appointment of—
 as assistant surveyor, 459.
 as commissioner for valuing lands, 782.
 confirmation of appointment of, 735.
 salary and allowances of, 666.

Bowman, James (principal surgeon)

allegations against, by Wentworth, W. C., 328.
 land grant to, 6.
 letter from, to Macleay, A., 469.
 magistrate, 59.
 punishment of Broadbear, R., proposed by, 357.
 report—
 by, on insanity of Holland, J., 469.
 of proceedings in supreme court in case of Broadbear, R., and wife against, 324 *et seq.*
 requisition by, for supply of medicines, 517, 518.
 resignation of, anticipated, 83.
 selection of successor to, 83.
 sitting magistrate at trial of Broadbear, R., and wife, 326.

Boyd, John

death sentence passed on, for piracy, 157.

Boydell, C.

land grant to, 6.

Brabyn, John (captain)

magistrate, 59.

Brisbane

disadvantages of site of, 523.

Brisbane, Sir James (commodore)

refusal to sanction payment of rent of house for family of, 464.
 rent of house for family of, 129.

Brisbane, Sir Thomas

abstract of lands alienated by, 236, 237, 603.
 alleged support of emancipists by, 97.
 appointment by, of Moore, W. H., as attorney-general, 700.
 astronomical instruments purchased from, 678.

Brisbane, Sir Thomas

examination of accounts during administration of, 602.
 letter from—
 to Halloran, L. H., 69.
 to Hay, R. W., 690.
 to Oxley, J., 269.
 to Scott, T. H., 29, 30.
 memorial to—
 from Cookney, G., 526.
 from Macarthur, J. and W., 10.
 opinion of, of state of colony, 587.
 racing cup presented by, 642.
 support from, expected for trial by jury and for assembly, 97.

Broadbear, Richard

complaint of Scott, T. H., against judicial conduct of Stephen, J., in case of, against magistrates, 321 *et seq.*
 conviction of, quashed by chief justice, 358 *et seq.*
 imprisonment of, 327.
 prosecution of, before bench of magistrates, 326, 327.
 report of proceedings in supreme court in case of, *v. Macarthur, Jas., and ors.*, 324 *et seq.*
 report on proceedings against, on prosecution of Scott, T. H., 354 *et seq.*
 wages of, 353.

Brooks, George (assist. surgeon)

magistrate, 59.
 recommendation of, for promotion, 264.

Brooks, Richard

magistrate, 59.

Brown, John

salary of, as draftsman, 666.

Brown, Robert

letter from, to Huskisson, W., 553.

Brown, William

magistrate, 59.

Brown, William

death sentence passed on, for piracy, 157.

Browne, W. J.

magistrate, 59.

Bruce, Mary

payment of wages to, as laundress at orphan school, 353.

Buffin (Miffen), David

proposed witness *re* shooting of native at Wallis plains, 412.

Buffy, Jeremiah

statement by, *re* shooting of native at Wallis plains, 406.

Burchell, Basil Herne (lieut., 3rd regt.)

magistrate, 59.

Burne, Benjamin

recommendation of, as surveyor, 495.
statement of qualifications of, 496.

Burnett, J.

letter from, to Macleay, A., 232.

Burns, —

payment of wages to, at orphan school, 353.

Burrowes, Stephen (ensign)

recommendation of, as settler, 515.

Burwood

expenses of executions at, 171.

Busby, James

letter from, to Macleay, A., 758.
report by, on claims of Revds. Cowper and Hill, 758 *et seq.*

Busby, John

estimates by, for water supply for Sydney, 365, 367 *et seq.*
extra pay claimed by, 216.
fixed salary for, 217, 546.
letter from, to Darling, Governor, 364, 367.
re-employment of, 363.
remuneration granted to, 546.
report by, on water supply for Sydney, 364, 365.
supervision of coal-mines by, 363.

Butler, G.

letter from, to —, 553.

Butler, James (capt., 40th regt.)

approval of payment of law costs of, 212.

Byham, P.

letter from, to Hill, W., 455.

Cahnac, Henry H. T.

memorial of, soliciting a land grant, 628.

Cambridge, ship

arrival of, 530.
despatch *per*, 232, 242, 257, 270, 272, 298, 391.

Camden

claim of Blaxland, J., to horses lost at, 574 *et seq.*

land—

grant to Blaxland, J., at, 580.
held by Macarthur, John, at, 13.

Cameron, Charles (lieut.-col., 3rd regt.)

land grant to, 5.

Campbell, —

appointment of, to superintend roads at Newcastle, 268, 615.

Campbell, John

commissioner for valuing crown lands, 563.
death of, 563.
evidence of, in suit Broadbear, R., and wife *v.* Macarthur, Jas., and ors., 348.
land grant to, 6.
magistrate, 59.

Campbell, John (brevet-major, 57th regt.)

adverse reports from, 794 *et seq.*
magistrate, 59.
recommendation by, of Port Essington, 795.
relief of, as commandant at Melville island, 214, 796.
request of, for relief, 551.
salary of, as commandant at Melville island, 112.
services of, 551.

Campbell, John Thomas

appointment of, as collector of customs, 245, 246, 248.
character of, 246.
letter from—
to Darling, Governor, 575.
to Macleay, A., 458, 459.
magistrate, 59.
report by—
on ease of Cogill, J., 458, 459.
on claims of Blaxland, J., 575 *et seq.*
on office of architect, 528.
resignation of, as collector of customs, 649, 652.

Campbelltown (N.S.W.)

appointment of superintendent of police at, 588.
purchase of court house at, 588.
stipendiary magistrate appointed at, 670.

Cape of Good Hope

restraint of press at, 192.

Cape, William

application from, *re* salary as schoolmaster, 238.

letter from, to Bathurst, Earl, 238.

Carter, John

refusal of petition of, 735.

Carter, Richard

death sentence passed on, for piracy, 157.

Carter, William

application from, for travelling allowances, 134, 135, 165.

appointment of, as sheriff, 648, 678, 679.

chairman of quarter sessions, 134.

criticism of conduct of, by Forbes, F., 432, 478.

legal procedure forced on, by Forbes, F., 480, 483.

letter from, to Macleay, A., 134, 174, 479, 746.

magistrate of colony, 59, 175.

master of supreme court, 170.

opinion of, *re* management of gaol, 175.

prosecution of *Australian* newspaper for libel on, 100, 429 *et seq.*, 477 *et seq.*

report by—

on assault on Foster, W., by Mackaness, J., 746, 747.

on attempted prosecution of Wardell, R., for libel, 479 *et seq.*

shipwreck of, 134, 179.

travelling allowance for, 465.

Carters barracks

management of, 241.

sale of crown live stock from, 661.

Cartwright, Reverend Robert

compensation granted to, 752, 755.

inducements offered to, on appointment, 775.

land held by, 130.

particulars relating to, 778.

salary of, 774.

Cavenagh, P. (assist. surveyor)

resignation of, 666.

Cawdor

selection of land for church and school at, 24 *et seq.*

valuation of government buildings at, 24, 30, 31.

Cedar

criticism in *Monitor* newspaper *re* royalty on, 181.

proceeds of sale of, 542.

Chamber of commerce

chairman of, 191.

criticism of, in press, 80.

Champion, ship

convicts *per*, 1.

despatch *per*, 309, 310, 315.

Chapman, Israel

absolute pardon for, 84.

approval of pardon for, 445.

Chief justice

See also "Forbes, Francis."

exclusion of, proposed from legislative council, 102.

payment of salary to, 233, 234, 361, 362, 477, 589.

sentry placed at house of, 728 *et seq.*

Chillerly, Thomas

payment of wages to, at orphan school, 353.

Chipp, Samuel

commutation of death sentence on, 301, 626.

Christie, Gust. Logie (Lieut., 3rd regt.)

magistrate, 59.

Church missionary society

appointment of trustees for land grant to, 107 *et seq.*, 120 *et seq.*

land grant to, 14, 107 *et seq.*

reservation to be made in grant to, 15.

Civil officers

applications from, for extended leave of absence, 685.

classification proposed for, 572.

effect of removal of Mackaness, J., on, 648.

formation of, into civil service, 568 *et seq.*

uniform proposed for, 584.

revision of salaries of, 242 *et seq.*, 387.

Civil service

character of men required for, 98, 387.

classification proposed for officers in, 572.

land grants—

in lieu of pensions for, 568 *et seq.*

proposed as gratuities for, 77, 78.

proposals for formation of, 76 *et seq.*, 388, 568 *et seq.*

salaries of clerks in, 387.

Clark, —

master of whaling ship *Harriet*, 160.

recapture of brig *Wellington* by, 103, 160.

Clay, Edward Meynard (capt., R.N.)

application from, for land grant, 626, 627.
letter from, to Huskisson, W., 627.

Clay, G. Bertie

land grant to, 6.

Clements, John

approval of appointment of, as storekeeper, 420.

Clergy

advances to corporation of church estates for stipends of, 124.
claims for compensation made by, 748 *et seq.*
inducements offered to, on appointment, 752, 753, 755, 775.
land grants to, 129, 130, 464, 772, 777.
position maintained by, 776.
poverty of, in colony, 772.
proposal for land grants to children of, 773, 774.
proposals *re* stipends of, 771 *et seq.*
return—
of, 778.
of lands held by, 130.
warrant of appointment for, 504.

Clergy and school estates

See "Estates, clergy and school."

Close, E. C.

inquiry by, *re* shooting of native, 400, 407 *et seq.*
land grant to, 6.
letter—
from, to Moore, W. H., 411.
to, from Moore, W. H., 406, 411.
magistrate, 59.
removal of, from magistracy, 400.

Clothing

manufacture of, in colony, 144, 662 *et seq.*

Coal

monopoly of, by A.A. company alleged in *Monitor* newspaper, 184.
proceeds of sale of, 542, 689.
supervision of mines for, by Busby, J., 363, 546.

Coates, Reverend Dandeson

application from, *re* land grant to C.M. society, 107, 108, 120 *et seq.*
letter from—
to Bathurst, Earl, 107.
to Hay, R. W., 120.
letter to—
from Hay, R. W., 108.

Coghill, John

toast of governor given by, at magistrates' dinner, 746.

Cogill, John

report by Campbell, J. T., on alleged smuggling by, 458, 459.

Collector of internal revenue

See "Land revenue, collector of."

Collector of land revenue

See "Land revenue, collector of."

"Colonial Times" (newspaper)

attacks on Arthur, G., in, 190.
imprisonment of editor of, 190.

Colthurst, Edward

execution of death sentence on, for piracy, 157, 158.
pardon for, 272.

Commissariat

instructions *re* requisitions for stores, 298 *et seq.*, 425, 426, 552, 696.
issue of notes by, 130 *et seq.*, 725, 726.
minute by governor *re* classification of expenditure on stores, 697 *et seq.*, 699.
payments to be made by, 743.
priced invoices required by, 534.
requisition for clothing for governor's body-guard, 455.
stores received from convict ships by, 530.
stores supplied by, to navy, 783.

Commissioners of navy

See "Navy, commissioners of."

Condamine, Thomas de la (lieut., 57th regt.)

aide-de-camp to Darling, Governor, 297.
appointment of, as collector of internal revenue, 241, 371, 613.
letter from—
to Darling, Governor, 308.
to Mills, G. G., 644.
to Moore, C. D., 645.
letter to—
from North, S., 267, 371.
resignation of, from military proposed, 297, 308, 371.
services of, 241.

Conolly, —

convict surgeon and his character, 193.

Convict ships

orders *re* masters and surgeons of, 8.
prohibition of importation of merchandize on, 8.

Convicts

See also "Expirees," "Tickets of leave."
abolition of bonus for employment of, 220.

approval—

of measures to provide assigned servants, 35, 36.

of reduction of, maintained by government, 617.

arrivals of, 1, 111.

assignment—

of, 136, 137, 166 *et seq.*

of, at Sydney, 166 *et seq.*

character of, in government service, 674.

clothing issued to, 534.

cost of maintenance of, 91, 92, 95, 687, 689.

criticism—

in *Monitor* newspaper—

re assignment of, 181.

re pardons for, 182.

in press of assignment of, 80, 140.

discipline of, at penal settlements, 106, 166 *et seq.*

educated convicts, treatment of, 193.

employment of—

as clerks, 76, 387, 535.

in government service, 673.

estimates of cost of maintenance of, 543.

expenses of maintenance of, 221.

families of, recommended for passages, 75.

form of application for, 140.

grinding mills for use by, 115.

influence of press on, 188, 259.

inquiry by board *re* department of, 534.

insurrection of, at Norfolk island, 266.

legal opinions on system of assignment of, 116, 137, 138, 139, 179, 187 *et seq.*, 489, 605, 608 *et seq.*, 612, 622 *et seq.*

legal status of, statement by Stephen, J., *re*, 188, 206 *et seq.*, 259 *et seq.*, 516.

list of departures of expirees, 96.

management and discipline of, 136, 139.

mutilation of registers by, 535.

number of, maintained by government, 534.

opinions *re* control of governor over, 187 *et seq.*, 487 *et seq.*

punishment of, at Norfolk island, 105.

regulations *re* assignment of, 488, 675.

report—

on, at Port Macquarie, 522, 523.

on expenses of establishment for, 144 *et seq.*

required *re* employment of, by crown, 215, 219.

Convicts

return—

of applications for, 676.

of, at Port Macquarie, 524.

of escaped convicts, 75, 677.

of, victualled by government, 305, 676.

salaries and expenses of establishment for, 143 *et seq.*

seizure of brig *Wellington* by, 103, 104, 160.

system adopted in assignment of, 672 *et seq.*

transportation of, 213.

valuation of labour of, 162 *et seq.*

Cookney, George

appointment and removal of, from office of architect, 525 *et seq.*

letter—

from, to Macleay, A., 528.

to, from Ovens, J., 528.

memorial of—

to Bathurst, Earl, 526.

to Darling, R., 526.

Cooney, Catherine

payment of wages to, at orphan school, 353.

Cooper, Daniel

impertinent letter written by, to colonial secretary, 81.

Cordeaux, William (D.A.C.G.)

land grant to, 6.

magistrate, 59.

Cornick, George

advances to, to be repaid, 36, 37.

repayment of advances by, 659, 660.

Coroners

fees to be retained by, 243.

expenditure on account of, 540, 688.

Corporation for church and school estates

See "Estates, clergy and school."

Correspondence

instructions *re* secrecy of, 672.

Cosway, W. H.

letter from, to Hay, R. W., 309.

Cotes, Charlotte

letter—

from, to Huskisson, W., 628.

to, from Stanley, E. G., 629.

Council, executive

- approval by—
 - of bill to regulate the press, 277, 285.
 - of plans for water supply for Sydney, 363, 371.
- consideration of status of ex-pirces as jurors by, 736, 738.
- error in filling vacancy on, 637.
- legal difficulties in appointing successor to lieutenant-governor on, 634 *et seq.*
- minute of—
 - re* bill to regulate the press, 285.
 - re* sale of land, 256.
 - re* sentences on pirates for seizure of brig *Wellington*, 157, 158.
 - re* water supply for Sydney, 371.
- objection to archdeacon as member of, 102.
- recommendation of, *re* land grants, 5.
- transmission of minutes of, 2, 546.

Council, legislative

- absence of governor from deliberations of, 383.
- appointment of successor to lieutenant-governor on, 242.
- approval of acts of, 505.
- bill for imposition of stamp duty on newspapers passed by, 374 *et seq.*, 393 *et seq.*
- clerk to, 16, 521, 522, 540, 588.
- election of members proposed for, 100.
- enlargement of, proposed, 100, 101.
- expenditure on account of, 92, 94, 472, 688.
- government influence in, 102.
- informal methods of, 383.
- objections to chief justice and archdeacon as members of, 102.
- origination of measures by members of, 100.
- power of, to impose taxes, 377, 381, 382.
- proceedings of, disclosed to press, 375.
- proposed composition of, 100, 101, 102, 658.
- transmission of acts of, 318, 418, 592, 677.

Countess of Harcourt, ship

- insufficiency of water supply on, 533.

Court of request

- appointment of commissioner of, 16, 521, 678.
- complaint against decisions of Holland, J., in, 311 *et seq.*
- constitution of, 314.
- separation of commissionership of, from solicitor-generalship, 446, 487.
- trial before—
 - of Blue, W., v. Mathew, D. D., 312, 314.
 - of Dowling v. Mathew, D. D., 311.

Cowper, Reverend William

- claim by, for compensation, 748 *et seq.*
- compensation recommended for, 748.
- inducements offered to, on appointment, 752, 755, 775.
- land held by, 130.
- particulars relating to, 778.
- payments made to, 749.
- report on claims of—
 - by Busby, James, 758 *et seq.*
 - by Scott, T. H., 750 *et seq.*
 - by Stewart, W., and Ryrie, S., 755 *et seq.*
- statement of claim by, 752.

Cox, George

- magistrate, 59.

Cox, William

- magistrate, 59.

Cox's river

- troops stationed at, 276.

Crawford, Robert

- application from, *re* his salary, 17, 45.
- immorality of, 72.
- letter from—
 - to Bathurst, Earl, 43.
 - to Macleay, A., 45, 46.
- letter to—
 - from Macleay, A., 46.
- protest of, *re* status in secretary's office, 43 *et seq.*
- refusal of request of, for increased salary, 215.
- resignation of, 46, 420, 441, 444.
- salary and fees of, 45.

Crime and criminals

- increase of crime alleged in *Monitor* newspaper, 182.
- report on, 67, 182, 372.
- returns of, 677.
- rewards for apprehension of offenders, 4.

Croker, J. W. (secretary to admiralty)

- letter from—
 - to Hay, R. W., 497.
- letter to—
 - from Legge, H., 621.
 - from Lewis, J. M., 621.
 - from Tucker, J., 621.

Cromarty, William

- approval of application of, for land, 41.
- land grant to, resumed for A.A. company, 38 *et seq.*, 439.
- letter to, from Goulburn, F., 41.
- report by Oxley, J., on land claimed by, 41, 42, 43.

Cross, Reverend John

particulars relating to, 778.

Crowther, John

payment of wages to, at orphan school, 353.

Cummings, —

meeting called at hotel of, 785.

Cunningham, Allan

commendation of services of, 620.
exploring expedition led by, 618, 619.
manufacture of boots for expedition of, 663.

Cunningham, Peter (surgeon, R.N.)

letter from, to Hay, R. W., 493.
request of, for confirmation of land grant, 498, 499.

Customs department

duties collected by, 542.
establishment of, 245, 248, 388.
expenditure on account of, 540, 688.
instructions to officers of, 545.
office accommodation provided for, 460, 727.
officers appointed to, 245, 246, 248.

Daley, Charles

death sentence passed on, for piracy, 157.

Daly, Arthur (capt., 12th regt.)

recommendation of, for land grant, 109, 110.

Dangar, Henry (assist. surveyor)

complaint of McIntyre, P., against, 149 *et seq.*

decision in case of, withheld, 779.

dismissal of, approved by Huskisson, W., 552.

instructions *re* land purchased by, 779.
malpractice alleged against, 162.

misconduct and censure of, 154, 156, 500, 501.

protest of, against his suspension, 499.

purchase of land orders by, 152, 500.

regulations broken by, 133, 154, 500.

report by land board on conduct of, 150 *et seq.*

resignation tendered by, 149, 502.

suspension of, 149, 665.

transmission of papers *re*, 237, 238.

withdrawal of land from, 149.

Dangar, William

land—

granted to, and purchased by, 150.

to be selected by, 155, 156.

Darling, Ralph (governor)

absence of, from deliberations of legislative council, 383.

abuse of, in open court by Wentworth, W. C., 547, 548, 638, 650, 707, 709.

approval of action of, in case of Sudds, J., and Thompson, P., 439.

criticism by, of New South Wales bill, 654 *et seq.*

demand by Mackness, J., for explanations from, 744, 745.

difficulties of, in fulfilling instructions *re* finance, 301, 302, 586.

exertions of, 586, 587.

health of, drank at turf club dinner, 642.

ill-health of, 568, 586.

impeachment of—

threatened by Wentworth, W. C., 647, 707, 710.

transmission of, to England, 789.

inspection of penal settlements by, 522.

instructions to—

re assignment of convicts, 606.

re expenditure, 113, 114, 668.

re finances of colony, 470 *et seq.*, 742, 743.

re grant and sale of lands, 219 *et seq.*

re grants of land to clergy, 464.

re issue of commissariat notes, 725, 726.

re land adjacent to military works, 380.

re management of convicts, 187.

re reduction of government farming establishments, 436.

re reports on geographical knowledge, 1.

re requisitions for stores, 298 *et seq.*, 425, 552, 696.

re secrecy of official correspondence, 672.

re settlement at Western port, 450, 451, 734.

re statements of revenue and expenditure, 426, 427.

re transmission of despatches, 428.

re transmission of returns, 763.

re treatment of Raymond, J., 441, 442.

interference of, in law courts alleged, 206, 207, 209, 260, 429 *et seq.*, 804, 811, 830.

letter from—

to adjutant-general, 799.

to Barnard, E., 73, 88, 102, 531, 533, 534, 584, 637.

Darling, Ralph (governor)

letter from—

- to Bathurst, Earl, 2, 5, 8, 14, 15, 16, 23, 38, 43, 50, 62, 67, 73, 75, 76, 83, 84, 88, 103, 110, 111, 112, 113, 114, 118, 119, 122, 125, 128, 129, 130, 134, 135, 141, 148, 149, 156, 158, 162, 166, 168, 176, 177, 236, 239, 240, 242, 244, 245, 246, 247, 249, 251, 254, 259, 264, 266, 268, 269, 270, 271, 272, 274, 277, 287, 289, 297, 300, 304, 308, 311, 315, 318, 362, 372, 374, 380, 389, 391, 399, 413, 458, 459, 467, 484, 487, 490, 492, 495, 496.
- to Baxter, A. M., 635.
- to Blaxland, G., 58.
- to Douglass, H. G., 707, 708, 710.
- to Forbes, F., 279, 281, 377, 379, 383, 384, 414, 416, 430, 431, 433, 510, 512, 683, 684, 722, 732, 733, 736, 805, 806, 807, 808, 811.
- to Foster, W., 635.
- to Goderich, Viscount, 499, 509, 516, 517, 518, 519, 521, 522, 525, 529, 531, 534, 535, 536, 537, 544, 545, 546, 547, 548, 549, 560, 561, 563, 564, 585, 587, 590, 592, 593, 598, 603, 604, 618, 622, 634, 638, 642, 647, 648, 652, 658, 660, 664, 667, 670, 672, 677, 678, 679, 685, 696, 700, 706, 717, 736, 743, 748, 763, 771, 780, 782, 786, 791.
- to Harrison, G., 237, 250, 361, 477.
- to Hay, R. W., 47, 49, 60, 63, 72, 76, 81, 83, 85, 86, 96, 104, 105, 112, 129, 143, 146, 147, 178, 185, 187, 194, 206, 231, 233, 251, 301, 306, 371, 386, 387, 417, 429, 468, 469, 475, 477, 484, 493, 503, 504, 530, 533, 563, 565, 567, 568, 573, 584, 585, 588, 590, 616, 630, 634, 637, 648, 649, 652, 659, 662, 664, 691, 692, 712, 727, 747, 767, 782, 784, 787, 789, 792, 797, 814.
- to Hill, W., 602.
- to Horton, R. W., 79, 189.
- to Huskisson, Right Hon. W., 786, 792, 793, 802, 812, 815.
- to Leely, T., 765.
- to Jamison, Sir J., 58.
- to Mackaness, J., 58, 639, 641, 745.
- to navy, commissioners of, 8, 73, 218, 533, 593.
- to secretary of state, 104, 189, 380, 492, 502.
- to Stephen, J., 208, 209, 390, 722, 736.
- to Stephen, James, 650.
- to Taylor, Sir H., 267, 297, 307, 308, 317.

Darling, Ralph (governor)

letter to—

- from Arthur, G., 126, 495.
- from Bathurst, Earl, 1, 13, 14, 17, 35, 62, 115, 117, 118, 141, 164, 165, 175, 176, 177, 210, 211, 212, 214, 215, 216, 217, 218, 219, 230, 232, 234, 238, 242, 257.
- from Baxter, A. M., 612, 623, 636, 723, 781.
- from Blaxland, J., 581.
- from Busby, J., 364, 367.
- from Campbell, J. T., 575.
- from Condamine, T. de la, 308.
- from Douglass, H. G., 709.
- from Dumaesq, W., 365, 367, 468, 493.
- from Forbes, F., 234, 253, 279, 280, 282, 378, 379, 384, 385, 392, 413, 415, 431, 432, 459, 510, 511, 513, 607, 680, 684, 685, 720, 733, 737, 738, 805, 806, 810, 817.
- from Foster, W., 612, 623, 636, 711, 723.
- from Goderich, Viscount, 270, 272, 298, 310, 372, 380, 391, 418, 419, 420, 421, 422, 426, 427, 433, 435, 436, 437, 438, 439, 441, 443, 444, 445, 447, 450, 451, 452, 460, 461, 462, 464, 465, 470, 476, 485, 486, 490, 494, 505, 506.
- from Gower, F. Leveson, 779, 780, 781.
- from Halloran, L. H., 171.
- from Hay, R. W., 1, 13, 16, 23, 31, 36, 37, 64, 107, 109, 115, 118, 120, 124, 132, 147, 161, 162, 177, 205, 232, 234, 235, 238, 239, 254, 276, 309, 315, 373, 374, 417, 418, 423, 424, 425, 428, 429, 434, 435, 441, 444, 445, 446, 447, 448, 450, 455, 457, 464, 465, 467, 473, 477, 484, 495, 497, 498, 504, 505, 507, 589, 593, 597, 620, 621, 695, 703, 713, 779.
- from Holland, M., 522.
- from Horton, R. W., 423, 506, 515, 552, 553, 554.
- from Huskisson, Right Hon. W., 508, 516, 531, 551, 581, 582, 592, 595, 603, 604, 613, 614, 615, 617, 618, 622, 625, 627, 668, 671, 672, 685, 725, 727, 734, 735, 739, 740, 741, 742, 762, 763, 767, 768, 770, 789.
- from Leely, T., 766.
- from Lithgow, W., 144, 575.
- from Mackaness, J., 640, 744.
- from Macleay, A., 144.
- from Moore, W. H., 263, 701.
- from Norton, J., 481.
- from Oxley, J., 365, 367.
- from Scott, T. H., 24, 319, 774.

Darling, Ralph (governor)

letter to—

from Stanley, E. G., 1, 625, 626, 627,
630, 637, 646, 669, 671, 690.

from Stephen, J., 209, 390, 720, 737.

from Stewart, W., 575.

from Wentworth, W. C., 729.

limitation of powers of, over expenditure,
114, 419, 663.

memorial to—

from Duke, R., 159.

from Halloran, L. H., 70.

from Mathew, D. D., 311.

objections of, to land grants to absentees,
306.

powers of, to make legal appointments, 787,
804, 809.

prohibition by, of sale or grant of land to
absentees, 532.

proposals by, *re* clergy, 773 *et seq.*

proposed issue of letters of denization by,
451.

reorganisation of departments by, 106.

report by, *re* finances, 537 *et seq.*, 685 *et
seq.*

request of, for nomination of clerk to
council, 522, 588.

tour of northern settlements proposed by,
417.

want of legal assistance felt by, 193, 383,
693.

Darling downs

discovery of, by Cunningham, A., 619.

Dawes battery

description of, 594.

fees to be retained by superintendent of,
243.

Dawson, George

letter from, to Hay, R. W., 216.

Dawson, Robert

agent for A.A. company, 59.

magistrate, 59.

Dennard, T.

proposal from A.A. company *re* family of,
309, 310.

Dixon, Robert (assist. surveyor)

salary and allowances of, 666.

Docker, Reverend Joseph

appointment of, 762.

**Donaldson, Vance Young (captain,
57th regt.)**

commandant at Norfolk island, 266, 562.
suppression of insurrection by, 266.

Donnison, Henry

recommendation of, for land grant, 620.

Douglass, Henry Grattan

adverse criticism of, 589.

apologies tendered by, 709.

appointment of, as commissioner of court of
request, 521, 588.

conduct of, at turf club dinner, 653, 707.

criticism—

of conduct of, by Darling, R., 712.

of, for advocacy of petition to H.M. the
King for reforms, 443, 647.

dismissal of, from office, 647, 652, 678, 706
et seq.

employment of—

as clerk of legislative council, 16, 521.

as commissioner of court of request, 16,
521.

health of Wentworth, W. C., proposed by,
at turf club dinner, 647, 653, 707.

impeachment of Darling, Governor, to be
carried to England by, 789.

leave of absence granted to, 706, 710.

letter—

from, to Darling, R., 709.

to, from Darling, R., 707, 708, 710.

official censure passed on, 707.

reasons for removal of, from office, 653.

removal of, from clerkship to council, 588.
results from action taken *re*, 644.

Dowling, George

trial in court of request of Dowling *v.*
Mathew, D. D., 311, 312.

Dowling, James (judge)

advance to, 490, 621.

appointment of, as judge, 447, 490.

arrival of, 802.

salary of, 472, 490.

Douglass, William

execution of death sentence on, for piracy,
157, 158.

recommendation by jury in favour of, 157.

Dragon, brig

return of, from Western port, 73.

Driscoll, John

payment of wages to, at orphan school, 353.

Driver, Charles

land grant to, 6.

Drummond, Henry

death sentence passed on, for piracy, 157.

Duke, J. H

application by, for head money for capture of pirates of brig *Wellington*, 789 *et seq.*

compensation paid to, 789.

letter from, to Huskisson, Right Hon. W., 790.

Duke, Robert

advance made to, 159.

compensation recommended for, 159, 161.

head money claimed on behalf of, 789, 790, 791.

master of ship *Sisters*, 103, 158.

memorial of, asking compensation, 159 *et seq.*

recapture of brig *Wellington* by, 103, 160.

Duker, —

recommendation of, for employment, 467.

Dulhunty (Dalhunty), John

land grant to, 6.

magistrate, 59.

Dulhunty, J. W.

land grant to, 6.

Dumaresq, Henry (lt.-colonel, N.S.W. corps)

clerk of council, 285.

departure of, for England with despatches, 417.

letter—

from, to Stephen, J., 263.

to, from Raymond, J., 48.

magistrate, 59.

moiety of salary paid to, 582.

report by, on office of architect, 528.

Dumaresq, William (capt., staff corps)

application from, to become military settler, 493.

appointment as civil engineer refused by, 468.

appointments of, 165, 472.

estimates for water supply for Sydney, 367 *et seq.*

Dumaresq, William (capt., staff corps)

evidence of, in suit Broadbear, R., and wife v. Macarthur, Jas., and ors., 346.

letter from—

to Darling, Governor, 365, 367, 468, 493.

to Macleay, A., 163, 659.

magistrate, 59.

proposal for appointment of, as collector of customs, 649.

reduction of, to half pay reported, 493.

report by—

on valuation of convict labour, 163 *et seq.*

on water supply for Sydney, 365 *et seq.*

salary of, 472, 496, 658, 659.

Duncan, John

evidence of, at inquiry *re* shooting of native, 410.

overseer of government gang at Wallis plains, 407.

Duncombe, David

recommendation of, for land grant, 690.

Dundas, — (captain. R.N.)

appointment of, to command of H.M.S. *Warspite*, 86.

Dunn, —

purchase of land order from, by Dangar, H., 152, 500, 501.

Dunwich

naming of, 523, 524.

settlement to be formed at, 523.

Dyball, T. C. (lieut., R.N.)

recommendation of, as naval settler, 637.

East India company

proposed formation of settlement at Swan river by, 740, 742.

regulation of trade within limits of charter of, 234, 426.

Eckford, John

district constable, 407.

evidence of, at inquiry *re* shooting of native at Wallis plains, 408.

Edwards, John

execution of death sentence on, for piracy, 157, 158.

Edwards, Thomas

death sentence passed on, for piracy, 157.

Elisabeth (Atherden, master), ship

despatch *per*, 495, 496, 499, 502, 503, 504,
509, 516, 517, 518, 519, 521, 522,
525, 529, 530, 531, 533, 534, 535,
536, 537, 544, 545, 546, 547, 548,
549, 560, 561, 563, 564, 565, 567,
568, 573, 584, 585, 587, 588, 590,
592, 593, 598, 602, 603, 604, 618.

Elisabeth (Collins, master), ship

despatch *per*, 658, 659, 660, 662, 664, 667,
670, 672, 677, 678, 679, 685, 691,
692, 696, 700, 706, 712, 717, 727,
736, 743, 747, 748, 763, 767, 771,
780, 782, 784, 786, 787, 789.

Elliott (Elliot), Philip (assist. surv.)

appointment of, 124.
salary and allowances of, 666.
testimony in favour of, 125.

Ellis, —

papers relating to, 177, 178.

Ellis, — (Mrs.)

employment of, at female orphan school,
549.

Emancipists

alleged support of, by Brisbane, Sir T., 97.
dinner given by, 98, 785.

Emu plains

convicts victualled by government at, 305.
land grant to Forbes, F., at, 269.
sale of crown live stock at, 661.
transmission of papers *re* immorality at,
297, 615.
troops stationed at, 276.

Engineer, civil

expenditure on account of, 540, 688.

Engineers, royal

refusal to send officers of, 462.
want of officers of, 119.

Ephemina, ship

despatch *per*, 622, 630, 634, 637, 638,
642, 647, 648, 649, 650, 652, 658.

Estates, clergy and school

See "Finance."

advances to trustees of, 90, 94, 122, 124,
463.

claim of Hill, Revd. R., on, 758, 760.

corporation for—

draft of charter of, 416.

preparation of charter for, 414 *et seq.*

Estates, clergy and school

criticism in *Monitor* newspaper *re*, 184.

fixed annual grant proposed for, 463.

method for allocation of, 227.

payment of clergy stipends by, 777.

report required on, 463.

revenue proportion paid to, 91, 123, 124,
538, 542, 543.

selection of land for, at Cawdor, 24 *et seq.*

Evernden, Thomas (lieutenant)

magistrate, 59.

Expenditure, public

See "Finance."

Expirees

eligibility of, as jurors, 736 *et seq.*

Exploration

expedition led by Cunningham, A., 618,
619.

proposals for, in interior of Australia, 554
et seq.

Faith, barque

despatch *per*, 391, 399, 413, 417, 429, 458,
459, 467, 468, 469, 475, 477, 484,
487, 490, 492, 493.

Farmer, James

recommendation of, for land grant, 690.

Farnham, Thomas

constable at Hunter river, 404, 407.

proposed witness at inquiry *re* shooting of
native, 407.

Farquhar, Sir Robert

letter from, to Hay, R. W., 466.

Female factory

approval of new system at, 211.

improvement in administration of, 105.

reforms at, 242.

resignation of matron of, 104.

steel grinding mills proposed at, 664.

women confined at, 105.

Fidkin, Urban

report *re*, 231, 232.

Finance

advances to trustees of clergy and school
estates, 90, 94, 122, 124, 463, 689.

appropriation of proceeds of agricultural and
stock farms, 791.

bills on treasury, instructions *re*, 142.

charge for company of staff corps, 310.

Finance

- criticism—
 - re* financial embarrassment in colony, 257 *et seq.*
 - in *Monitor* newspaper *re* non-publication of accounts, 181.
- custody of public treasure, instructions *re*, 520, 521.
- expenditure—
 - amount of, chargeable to English treasury, 687.
 - estimates of, 540, 541, 543, 688, 689.
 - for year 1825, 92, 93.
 - for year 1826, 94, 95, 470.
 - heads of, 91, 471.
 - instructions *re*, 113, 114, 301, 426, 427, 470 *et seq.*, 742.
 - items of, to be paid by H.M. treasury, 473, 537 *et seq.*
 - limitation of governor's power of, 114, 301, 419, 668.
 - remarks by Darling, Governor, on, 90 *et seq.*, 537 *et seq.*, 685 *et seq.*
 - salaries, payment of, 141, 142.
- instructions *re* division of colonial expenditure, 470 *et seq.*, 742.
- issue of notes by commissariat, 130 *et seq.*, 725, 726.
- location in barrack square of offices for, 459, 460.
- payment of salary to chief justice, 233, 234, 361, 362, 477, 589.
- produce, annual, of colony, 54.
- remittance to colonial agent, 88.
- return of debts due to government, 689.
- revenue—
 - amount of, collected, 50, 54, 58, 89.
 - charges to be met out of, 472.
 - cost of collection of, 94.
 - effect of colonial distillation on, 537.
 - for year 1825, 92, 93.
 - for year 1826, 94, 95, 471.
 - for year 1827, 542, 543, 688.
 - instructions *re*, 113, 426, 427, 470 *et seq.*
 - monies received as internal revenue, 585.
 - remarks by Darling, Governor, on, 89 *et seq.*, 537 *et seq.*, 685 *et seq.*
 - sources of, 91.
- revision of salaries, 242 *et seq.*
- statement of accounts for years 1821-5, 602.
- transmission of abstracts of accounts, 786.

Finch, Heneage (Henry) (asst. surv.)

salary and allowances of, 666.

Fish river

troops stationed at, 276.

Fitzgerald, J. (lieut., 39th regt.)

magistrate, 59.

Fitzgerald, Right Hon. V.

letter from, to Horton, R. W., 442.

Flannighan, Patrick (alias Russel)

death sentence passed on, for piracy, 157.

Fleming, William

agent for Howe, R., 696.

Florance, Thomas (assist. surveyor)

salary and allowances of, 666.

Florentia, ship

convicts *per*, 1.

despatch *per*, 417, 455, 470, 473, 484, 485, 486, 490, 494, 495, 497.

Fly, H.M. ship

return of, from Western port, 73.

stores required by, 141.

Forbes, Francis (chief justice)

action of, in prosecution of Wardell, R., 477 *et seq.*

amendments to N.S.W. bill proposed by, 657.

appointment—

by, of Stephen, F., as clerk in supreme court, 680, 684, 728, 732, 733.

of Stephen, J., jr., under consideration by, 788, 810, 816, 827, 829.

consequences of interpretation of law *re* assignments by, 606.

contradictory procedure recommended by, 788.

correspondence with, *re* appointment of Foster, W., as solicitor-general, 509 *et seq.*

course adopted by—

in case of N.S.W. act, 814, 824.

in case of stamp act, 812.

criticism—

of conduct of, 376, 386, 648, 692.

of *Sydney Gazette* by, 718, 721.

decision of, *re* status of attorney-general, 514.

decisions of, in libel actions, 480 *et seq.*

desire of, for power, 657, 788, 814.

distortion of facts by, 816, 828.

duties of, 283, 284.

embarrassments to governor caused by, 692.

fee on commission of, 103.

Forbes, Francis (chief justice)

- health of, 85.
- information supplied to press by, 207, 208, 261, 318, 319.
- instructions of, to jury at trial of Wardell, R., 724.
- interference of governor in law courts alleged by, 804, 816.
- labours of, 279.
- land—
 - grant to, 6, 251, 269.
 - reserved for mother of, 251 *et seq.*, 269.
- latitude allowed to Wardell, R., by, 719, 723.
- letter from—
 - to Bathurst, Earl, 289.
 - to Darling, Governor, 234, 253, 279, 280, 282, 378, 379, 384, 385, 392, 413, 415, 431, 432, 489, 510, 511, 513, 607, 680, 684, 685, 720, 733, 737, 738, 805, 806, 810, 817.
 - to Holland, J., 204, 514.
 - to Huskisson, Right Hon. W., 817.
 - to Macleay, A., 807.
- letter to—
 - from Darling, Governor, 279, 281, 377, 379, 383, 384, 414, 416, 430, 431, 433, 510, 512, 683, 684, 722, 732, 733, 736, 805, 806, 807, 808, 811.
 - from Holland, J., 514.
- magisterial decision *re* Broadbear, R., and wife quashed by, 324.
- objections of—
 - to legislation *re* press, 79, 80, 280.
 - to Wardell, R., 694.
- opinion of—
 - re* control of assignment of convicts, 137 *et seq.*, 187 *et seq.*, 489, 605, 608 *et seq.*, 622 *et seq.*
 - re* eligibility of expirers as jurors, 738.
 - re* illegality of instructions to governor, 188.
 - re* legality of tickets of leave, 605, 610 *et seq.*, 622 *et seq.*
 - re* power of governor to make legal appointments, 787, 804.
- opposition of, to government, 816.
- participation of, in proposed impeachment of Darling, Governor, 789.
- payment of salary of, 233, 234, 361, 362, 477, 589.
- popularity courted by, 813.
- power claimed by, to regulate taxes, 277, 381, 382, 397.
- proposed application of, for leave, 649.
- quashing of conviction of Broadbear, R., and wife by, 358 *et seq.*

Forbes, Francis (chief justice)

- reasons of, for refusal to certify bill *re* press, 289 *et seq.*, 375 *et seq.*, 380 *et seq.*, 391 *et seq.*
- refusal of—
 - to administer oaths to Holland, J., 60, 61, 193, 196, 198, 204, 510, 512, 514.
 - to administer oaths to Stephen, J., jr., 787, 802 *et seq.*, 815 *et seq.*
 - to give extra judicial opinion *re* eligibility of expirers as jurors, 737.
- relations of, with juries, 693.
- registrar's duties to be determined by, 806.
- remarks by, on trial of Wardell, R., for libel, 718, 720.
- reorganisation of establishment of supreme court proposed by, 680 *et seq.*, 802.
- requests made to, *re* trial of Wardell, R., 429 *et seq.*
- sentry posted at house of, 728 *et seq.*
- submission of bill *re* press to, 277 *et seq.*, 375 *et seq.*, 380 *et seq.*
- support of Stephen, F., by, 693, 727.
- transmission of N.S.W. bill to England by, 657, 824.
- transportation laws criticised by, 608 *et seq.*

Forbes, George

magistrate, 59.

Fort Dundas

See "Melville island."

Fort Macquarie

description of, 594, 595.

Fort Wellington

See "Raffles bay."

Foster, William

- admission of, as attorney in supreme court, 511, 513.
- appointment of—
 - as chairman of bench of magistrates, 678.
 - as commissioner of court of requests, 678.
 - as solicitor-general, 509, 511.
- assault committed on, by Mackaness, J., 744, 746, 747.
- association of, with Wentworth, W. C., 706, 707, 711.
- counsel for prosecution at trial of Wardell, R., 718.
- expense involved in employment of, 565.
- incapacity of, as advocate, 694.

Foster, William

letter from—

to Darling, Governor, 612, 623, 636, 711, 723.

to Macleay, A., 746.

letter to—

from Darling, Governor, 635.

objections of Forbes, F., to appointment of, 509 *et seq.*

opinion of—

re appointment of successor to lieutenant-governor on executive council, 634 *et seq.*

re failure of trial of Wardell, R., for libel, 719, 723, 724.

re regulations for assignment of convicts, 612.

re validity of tickets of leave, 623 *et seq.* salary of, 678.

France

anticipated missionary enterprise in south seas from, 475, 476.

possibility of French settlement in Australia, 304, 796.

Fulloon, Elizabeth (Mrs.)

See "Raine, Elizabeth (Mrs.)."

Fulton, Reverend Henry

land held by, 130.

magistrate, 59.

particulars relating to, 778.

Fulton, T.

clerk to bench of magistrates at Parramatta, 334.

evidence of, in suit Broadbear, R., and wife against Macarthur, Jas., and ors., 334.

Futter, Robert (lieut., R.N.)

magistrate, 59.

Gaol

application *re* salary of gaoler, 536.

commission to architect on building of, 528.

complaint of Halloran, L. H., *re*, 172.

expenditure on, 689.

management of, disputed by sheriff, 169 *et seq.*, 583.

Garling, Frederick

appointment of, as crown solicitor, 448.

clerk of the peace, 347.

evidence of, in suit Broadbear, R., and wife *v.* Macarthur, Jas., and ors., 347.

voting by, on resolutions of turf club, 643.

Geographe bay

possibility of French settlement at, 304.

Geography

instructions *re* reports on development of knowledge of, 1.

Gibbs, T. B. (lieut., R.N.)

magistrate, 59.

Gibbs, Thomas

letter from, to Gregory, W., 454.

Gilchrist, John

account by, of arrest of Wentworth, W. C., 731.

Giles, Charles

proposal from A.A. company *re* family of, 309, 310.

Gillman, Henry (capt., 3rd regt.)

magistrate, 59.

travelling allowance for, 165.

"Gleaner" (newspaper)

anticipated policy of, 101.

foundation of, 101.

transmission of series of, 503.

Glebe or Grose farm

convicts victualled by government at, 305.

troops stationed at, 276.

Goderich, Viscount

appointment of, as secretary of state, 270.

letter from—

to Darling, Governor, 270, 272, 298, 310, 372, 380, 391, 418, 419, 420, 421, 422, 426, 427, 433, 435, 436, 437, 438, 439, 441, 443, 444, 445, 447, 450, 451, 452, 460, 461, 462, 464, 465, 470, 476, 485, 486, 490, 494, 505, 506.

letter to—

from Darling, Governor, 499, 509, 516, 517, 518, 519, 521, 522, 525, 529, 531, 534, 535, 536, 537, 544, 545, 546, 547, 548, 549, 560, 561, 563, 564, 585, 587, 590, 592, 593, 598, 603, 604, 618, 622, 634, 633, 642, 647, 648, 652, 658, 660, 664, 667, 670, 672, 677, 678, 679, 685, 696, 700, 706, 717, 736, 743, 748, 763, 771, 780, 782, 786, 791.

from Hooke, J., 456.

from Young and Thornbull, 456.

memorial to—

from Bettington, J., Sons and Co., 474.

from McLellan, J., 424.

successor appointed to, 508.

Gold (Gould), John

- magistrate, 59.
- murder of, by natives at Melville island, 794.
- salary of, as surgeon at Melville island, 214.

Goulburn, Frederick (colonial secty.)

- letter from, to Cromarty, W., 41.

Goulburn, Henry (secty. for Ireland)

- letter—
- from, to Horton, R. W., 48, 442.
- to, from Bathurst, Earl, 49, 442.

Governor

- clothing for bodyguard of, 455.
- emoluments of, 472.
- expenditure on account of, 92, 94, 540, 686.
- limitation of power of, over expenditure, 114, 301, 419, 668.
- power of, to make regulations for assignment of convicts, 116, 138, 139, 187 *et seq.*, 489, 605, 608 *et seq.*, 612, 622 *et seq.*
- powers delegated to, 290, 381.

Governor Phillip, brig

- purchase of, by government, 301, 550.
- voyage of, with relief to northern settlements, 795.

Govett, William Romaine (assist. surveyor)

- appointment and salary of, 238.
- promotion of, 233.
- salary and allowances of, 666.

Gower, F. Leveson (under secretary)

- letter from, to Darling, Governor, 779, 780, 781.

Graham, Michael

- payment of wages to, at orphan school, 353.

Gray, John M.

- payment to, as pilot at Moreton bay, 165.

Green, —

- commissariat clerk, 794.
- murder of, by natives at Melville island, 794.

Gregson, Matthew

- pardon granted to, 549.

Gregory, W.

- letter from—
- to Hobhouse, H., 453.
- letter to—
- from Gibbs, T., 454.
- from Hughes, P., 453.

Guilford, ship

- convicts *per*, 1.
- despatch *per*, 1, 13, 14, 16, 17, 23, 31, 35, 36, 37, 62, 64, 107, 115, 117, 118, 120, 124, 132, 141, 161, 164, 165, 175, 176, 177.

Gunn, Robert

- report on conduct of, 14.

Gurner, John

- appointment of, as registrar, 804, 809, 813, 816, 820, 822, 830.
- chief clerk in supreme court, 683.
- evidence of, in suit Broadbear, R., and wife v. Macarthur, Jas., and ors., 347.

Hall, Edward Smith

- articles written by, in *Monitor* newspaper, 191.
- condemnation of, by public, 192.
- position of, in colony, 180.
- presence of, at meeting called by Mackaness, J., 785.

Hallen, — (assist. surveyor)

- appointment of, 23, 665.
- employment of, as town surveyor, 658.
- testimony in favour of, 23.

Halloran, Henry

- salary of, as clerk in survey department, 667.

Halloran, Laurence H.

- approval of, by Brisbane, Sir T., 69.
- complaint of, *re* management of gaol, 172.
- confinement of, in gaol as debtor, 68, 168.
- letter from—
- to Bathurst, Earl, 68.
- to Darling, Governor, 171.
- letter to—
- from Brisbane, Sir T., 69.
- from Macleay, A., 70, 72.
- memorial of, to Darling, Governor, 70, 71.
- newspaper established by, 101.
- proposals of, for grammar school, 68, 69, 70, 71.
- refusal of land grant and assistance for grammar school to, 444.
- request of, for land grant and assistance in grammar school, 67 *et seq.*

- Harington, H. H.**
land grant to, 6.
- Harington, Thomas Cudbert**
magistrate, 59.
- Harmony, ship**
arrival of, 530.
convicts *per*, 1.
despatch *per*, 270, 373.
- Harper, William (assist. surveyor)**
retirement of, on pension, 665.
- Harrington, J. T.**
appointment of, as assistant colonial secretary, 44.
article by, in *Monitor* newspaper on free press, 80.
confirmation of appointment of, as assistant colonial secretary withheld, 420.
- Harris, John**
criticism in *Australian* newspaper of, 319.
evidence of, in suit Broadbear, R., and wife v. Macarthur, Jas., and ors., 333.
magistrate, 59.
police magistrate at Parramatta, 333.
punishment of Broadbear, R., proposed by, 357.
sitting magistrate at trial of Broadbear, R., and wife, 326.
- Harrison, —**
master of ship *Speke*, 73.
report on conduct of, 73.
- Harrison, George (secretary)**
letter to, from Darling, Governor, 237, 250, 361, 477.
- Hart, Thomas**
report to be made *re*, 477.
- Hartly, — (capt., 57th regt.)**
appointment of, as commandant at Melville island, 796.
- Harvey, Robert**
conviction of, for manslaughter, 598 *et seq.*
memorial of, to Wellesley, Marquis, 598.
pardon for, 598.
- Hassall, James**
land and live stock possessed by, 716.
memorial of, soliciting land grant, 715.
- Hassall, Reverend Thomas**
land held by, 130.
particulars relating to, 778.
- Hasselburgh, Mary**
payment of wages to, at orphan school, 353.
- Harewood, —**
master of brig *Wellington*, 160.
- Harvey, C.**
money received on account of, 103.
- Hawker, Edward (captain, R.N.)**
refusal of land grant to, 434.
- Hawkins, John (lieut.)**
recommendation of, as a settler, 505.
- Hay, Charles (alias Todhunter)**
death sentence passed on, for piracy, 157.
- Hay, Robert W. (under secretary)**
colonies placed in charge of, 621.
letter from—
to Barlow, J., 507.
to Bligh, R., 19, 22.
to Coates, D., 108.
to Darling, Governor, 1, 13, 16, 23, 31, 36, 37, 64, 107, 109, 115, 118, 120, 124, 132, 147, 161, 162, 177, 205, 232, 234, 235, 238, 239, 254, 276, 309, 315, 373, 374, 417, 418, 423, 424, 425, 428, 429, 434, 435, 441, 444, 445, 446, 447, 448, 450, 455, 457, 464, 465, 467, 473, 477, 484, 495, 497, 498, 504, 505, 507, 589, 593, 597, 620, 621, 695, 703, 713, 779.
to Holland, J., 445.
to Hooke, J., 457.
to Phillips, M., 133.
to Sloper, J., 35.
to Stirling, R., 705.
letter to—
from Abbott, J., 235.
from Balfour, W., 428.
from Barlow, J., 507.
from Barrow, J., 763.
from Bligh, R., 21.
from Brisbane, Sir T., 690.
from Coates, D., 120.
from Cosway, W. R., 309.
from Croker, J. W., 497.
from Cunningham, P., 498.
from Darling, Governor, 47, 49, 60, 63, 72, 76, 81, 83, 85, 86, 96, 104, 105, 112, 129, 143, 146, 147, 178, 185, 187, 194, 206, 231, 233, 251, 301, 306, 371, 386, 387, 417, 429, 468, 469, 475, 477, 484, 493, 503, 504, 530, 533, 563, 565, 567, 568, 573, 584, 585, 588, 590, 616, 630, 634, 637, 648, 649, 652, 659, 662, 664, 691, 692, 712, 727, 747, 767, 782, 784, 787, 789, 792, 797, 814.

Hay, Robert W. (under secretary)

- from Dawson, G., 216.
- from Farquhar, Sir R., 466.
- from Herries, J. C., 37, 142, 257, 299, 455.
- from Hill, W., 425.
- from Hoare, S., 115.
- from Hobhouse, H., 116, 117, 213.
- from Holland, J., 195.
- from Lewis, T. F., 725.
- from Mayer, G., 148.
- from Murray, Sir G., 64, 65.
- from Palmerston, Viscount, 38.
- from Rice, T. S., 452.
- from Somerset, Lord Fitzroy, 781.
- from Stirling, R., 704, 705, 714, 800.
- from Taylor, Sir H., 109, 448, 801.
- from Telford, T., 23.
- from Turner, C., 429.
- from Vincent, J., 162.
- from Ward, R., 205.

Hely, Frederick Augustus

- appointment as acting superintendent of police, 244, 604.
- letter from, to Macleay, A., 663.
- magistrate, 59.
- report by, on manufacture of shoes and clothing, 663 *et seq.*

Heming, — (Miss)

- claim of, on Mackaness, J., for payment of annuity, 423.

Herries, J. C.

- letter from, to Hay, R. W., 37, 142, 257, 299, 455.

Hicks, John

- evidence of, at inquiry *re* shooting of native at Wallis plains, 410.
- statement by, *re* shooting of native at Wallis plains, 404.

Hicks, Richard

- death sentence passed on, for piracy, 157.

Higgins, Richard F.

- proposal from A.A. company *re* family of, 309, 310.

Hill, James

- report required *re*, 671.

Hill, Patrick (assist. surgeon)

- magistrate, 59.
- recommendation of, for promotion, 264.

Hill, Reverend Richard

- claim by, for compensation, 748 *et seq.*
- compensation recommended for, 748.
- land held by, 130.
- letter from, to Scott, T. H., 753.
- particulars relating to, 778.
- payments made to, 749.
- report on claims of—
 - by Busby, James, 760 *et seq.*
 - by Scott, T. H., 750 *et seq.*
 - by Stewart, W., and Ryrie, S., 757 *et seq.*
- statement of claim by, 753.

Hill, S. B.

- money received on account of, 103.

Hill, W.

- letter from—
 - to Hay, R. W., 425.
- letter to—
 - from Byham, R., 455.
 - from Darling, Governor, 602.

Hincks, James

- conviction of, for manslaughter, 598 *et seq.*
- memorial of, to Wellesley, Marquis, 598.
- pardon for, 598.

Hinks, Jane

- money received on account of, 103.

Hoare, Samuel

- letter from, to Hay, R. W., 115.
- shipping of grinding mills by, 115.

Hobhouse, H. (under secretary)

- letter—
 - from, to Hay, R. W., 116, 117, 213.
 - to, from Gregory, W., 453.

Hodde, Robert (assist. surveyor)

- approval of salary for, 211.
- salary of, 666.

Holland, James

- advance made to, 103, 533.
- advance to widow of, 521.
- application from widow of, 521, 522.
- appointment of—
 - as commissioner of court of request, 16, 194, 195, 198, 438, 446, 487.
 - as solicitor-general, 60.
- appointments of, announced in *Gazette*, 200.
- complaint of Mathew, D. D., against decisions of, 311 *et seq.*
- death of, 521.
- ineapacity of—
 - to conduct crown prosecutions, 82.
 - for office, 60, 61, 193, 194.

Holland, James

- letter from—
 - to Bathurst, Earl, 197.
 - to Forbes, F., 514.
 - to Hay, R. W., 195.
 - to Macleay, A., 61, 201, 314.
- letter to—
 - from Forbes, F., 204, 514.
 - from Hay, R. W., 445.
 - from Macleay, A., 205.
- notification of appointment of, not received, 60, 196, 197, 204, 438, 446.
- protest against appointment of, as judge, 85.
- reception of, on arrival, 196, 199, 200.
- refusal—
 - of chief justice to administer oaths to, 60, 61, 193, 196, 198, 204, 510, 512, 514.
 - of lawyers to appear before, 312.
 - of, to give explanations to governor, 314.
- report on insanity of, 463, 469.
- salary received by, 61, 194, 195, 202.
- transfer of, from Bermuda, 195, 202, 203.

Holland, M. (Mrs.)

- letter from, to Darling, Governor, 522.

Holmes, Edward

- commutation of death sentence on, 300, 301, 626.

Holt, William

- death sentence passed on, for piracy, 157.

Hoogley, ship

- arrival of, 814.
- convicts *per*, 1.
- despatch *per*, 446, 505, 506, 507, 508, 516, 531, 552, 553, 581, 582.

Hooke, John

- capital possessed by, 456.
- letter—
 - from, to Goderich, Viscount, 456.
 - to, from Hay, R. W., 457.
- request of, for special grant, 456.
- testimonial in favour of, 456.

Horton, R. Wilmot (under secretary)

- letter from—
 - to Ballantine, J., 560.
 - to Darling, Governor, 423, 506, 515, 552, 553, 554.
 - to Icely, T., 766.
- letter to—
 - from Darling, Governor, 79, 189.,
 - from Fitzgerald, V., 442.
 - from Goulburn, H., 48, 442.
 - from Icely, T., 766.
 - from Innes, Sir H., 119.
 - from Macqueen, T. P., 632.

Hosking, John

- land grant to, 6.

Hospitals

- appointment of deputy inspector of, proposed, 84.
- expense of fuel and light at, 145.
- land grant on site of, at Sydney, 573, 577, 578, 580.
- proposal for control of civil and military hospitals by one officer, 83, 84.
- requisition for supply of medicine, 517, 518.
- revision of salaries of staff of, 242 *et seq.*
- stores received from convict ships at, 530.

Hovell, William Hilton

- employment of, to examine Western port, 74.
- report by, on Western port, 240.

Howe, Robert

- approval of allowance to, for printing public documents, 217.
- evidence of, in suit Broadbear, R., and wife v. Macarthur, Jas., and ors., 333.
- government printer, 217.
- memorial of, soliciting appointment as King's printer, 695.

Howe, William

- magistrate, 59.

Howey, Henry

- land grant to, 6.

Hughes, Phelim (Philip)

- certificate of sentence passed on, 454.
- error in record of sentence on, 452 *et seq.*
- letter from, to Gregory, W., 453.

Hungerford, — (captain)

- recommendation of, for land grant, 467.

Hunter river

- appointment of surveyor of road to, 268.
- depredations by natives at, 177.
- land—
 - reserved at, for mother of Forbes, F., 251 *et seq.*, 269.
 - selected at, 39.
- report on allotment of land by Dangar, H., at, 150 *et seq.*
- shooting of native by mounted police at, 179, 317, 399 *et seq.*

Huskisson, Right Hon. William

- appointment of, as secretary of state, 508, 793.
- congratulations tendered by Darling, Governor, to, 786.

Huskisson, Right Hon. William

letter from—

to Darling, Governor, 508, 516, 531, 551,
581, 582, 592, 595, 603, 604, 613,
614, 615, 617, 618, 622, 625, 627,
668, 671, 672, 685, 725, 727, 734,
735, 739, 740, 741, 742, 762, 763,
767, 768, 770, 789.

letter to—

from Ballantine, J., 555.
from Brown, R., 553.
from Clay, E. M., 627.
from Côtés, Charlotte, 628.
from Darling, Governor, 786, 792, 793,
802, 812, 815.
from Duke, J. H., 790.
from Forbes, F., 817.
from Walker, W., 630.

memorial to, from Howe, R., 695.

Hyde park barracks

expenses of tailoring and shoemaking at,
145.
manufacture of shoes and clothing at, 662
et seq.

Icely, Thomas

amount claimed by, 766.
application of, for land, 185, 186.
capital possessed by, 185, 186.
claims made by, for refund of duty on
spirits, 763 *et seq.*

land—

granted to, 185, 186.
to be purchased by, 429.

letter from—

to Darling, Governor, 766.
to Horton, R. W., 766.
to Macleay, A., 186.

letter to—

from Darling, Governor, 765.
from Horton, R. W., 766.

payment made to, 765.

Illawarra

troops stationed at, 276, 303.

Inches, I. N.

land grant to, 6.

Innes, Archibald C. (capt., 3rd regt.)

magistrate, 59.

Innes, George

additional land grant for, 118, 119.
magistrate, 59.

Innes, Sir Hugh

letter from, to Horton, R. W., 119.

Informers

treatment of, 616.

Ireland

conviction of police for manslaughter in,
598 *et seq.*

Irish town

expenses of executions at, 171.

Isabella, schooner

property of government, 304.
tonnage of, 550.

Jackson, J. A.

salary of, as draftsman, 666.

Jackson, John Serocold

approval of appointment of, as barrack
master, 421.

Jamison, Sir John

apology written by Mackaness, J., on advice
of, 744.

letter to, from Darling, Governor, 58.

petition from colonists presented by, 50,
57, 58.

refusal of Huskisson, W., to modify censure
on, 615.

transmission of papers from, 297.

voting by, on resolutions of turf club, 643.

Jamison, Thomas

land grant to, 6.

John, ship

arrival of, 630.

convicts *per*, 1.

despatch *per*, 372, 418, 419, 420, 421, 422,
423, 424, 425, 427, 428, 429, 433,
434, 435, 436, 437, 438, 439, 441,
443, 444, 445, 447, 448, 450, 451.

Johnson, Mrs.

wages of, at orphan school, 353.

Johnson, Richard

execution of death sentence on, for piracy,
157, 158.

Johnston, George (lt.-colonel, N.S.W. corps)

presence of sons of, at meeting called by
Mackaness, J., 785.

Joice, Thomas (sergeant, 57th regt.)

account by, of arrest of Wentworth, W. C.,
731.

Jones, —

corporal of guard at arrest of Wentworth, W. C., 731.

Jones, Richard

compensation proposed by, for recapture of brig *Wellington*, 161.
land granted to, 631.
letter from, to Macleay, A., 161.
magistrate, 59.
member of board of inquiry on naval department, 249.
merchant at Sydney, 159.

Jones, William

evidence of, at inquiry *re* shooting of native at Wallis plains, 410.

Jury

eligibility of expirees to sit on, 736 *et seq.*
petition for extension of trial by, 51 *et seq.*, 96 *et seq.*, 443.
practice of trial by, at quarter sessions, 52.

Kean, Reverend John Espie

evidence of—
at prosecution of Broadbear, R., and wife, 326, 354, 355.
in suit Broadbear, R., and wife *v.* Macarthur, Jas., and ors., 347.
land held by, 130.
particulars relating to, 778.
superintendent of female orphan school, 326.

Keith, Edward Joseph

address by, for defendants in suit Broadbear, R., and wife *v.* Macarthur, Jas., and ors., 336.
counsel for defendants in Broadbear, R., and wife *v.* Macarthur, Jas., and ors., 331.
evidence—
objected to by, 331, 335.
of, in suit Broadbear, R., and wife *v.* Macarthur, Jas., and ors., 348.
instructions given to, for prosecution of Broadbear, R., and wife, 354.
voting by, on resolutions of turf club, 643.

Kelly, Patrick

criticism in *Monitor* newspaper in case of, 180.

Kelly, Richard

land grant to, 6.

Kemmis, Arthur

recommendation in favour of, 593.

Kempt, —

recommendation of, as settler, 276.

Kendrick, William

reply of Rossi, F. N., to allegations of, 422.

Kenny, Cornelius

sentence passed on, 216.

King, Edward (ensign, 48th regt.)

approval of dismissal of, as barrack master, 421.

King George's sound

abandonment of settlement at, suggested, 742.
abundance of natural products at, 273.
convicts employed at, 303, 305.
departure of expedition to, 73.
difficulties of communication with, 273, 667.
establishment of settlement at, 189.
expenditure on settlement at, 544.
further instructions to be sent *re*, 742.
importance of, as naval station, 273.
report by Lockyer, E., on, 272, 273.
troops stationed at, 276, 303.
visit of corvette *L'Astrolabe* to, 304.

King, His Majesty the

petition to, from colonists, 51 *et seq.*

King, Philip Gidley (ex-governor)

land granted to Bligh, W., at Parramatta by, 17 *et seq.*

Kinghorne, Alexander

magistrate, 59.
salary of, as acting civil engineer, 496.

Kingsmill, John

conviction of, for manslaughter, 593 *et seq.*
memorial from, to Wellesley, Marquis, 598.
pardon for, 598.

Knapp, E. J. H.

salary of, as draftsman, 666.

Knatchball, Sir Edward

convict brother of, employed as constable, 193.

Lady Nelson, brig

capture of, by pirates, 110.

Lafitte, —

promoter of French enterprise in south seas, 475.

Laidley, James (dep. com.-genl.)

memorandum by, *re* supplies to ships of war, 783.

Lamb, William B.

land grant held by, 373.
recommendation in favour of, 373.

Land

abstract of sales of, by Brisbane, Sir T., 236, 237, 603.
amounts due for sale of, 689.
approval of sale of, by public auction, 614.
collector of revenues from, 229, 232, 233.
concessions proposed for purchasers of, 227.
conditions of payment for, 128.
control of purchasers of, 225.
criticism in *Monitor* newspaper *re* administration of, 181.
disposal of crown lands, instructions *re*, 111, 219 *et seq.*
equality of grantees and purchasers proposed, 220, 225, 230.
limitation of area of, for sale, 225.
modifications in instructions *re* disposal of, 219 *et seq.*
proceeds of sale of, 542.
prohibition of sale of, to absentees, 532.
regulations for sale of, 226.
report on malpractice of Dangar, H., in allotment of, 150 *et seq.*
reserve of, for mother of Forbes, F., 251 *et seq.*, 269.
sale of, by auction *vice* tender proposed, 254 *et seq.*
suspension of sale of, 254, 255.
tickets of occupation, abolition of, 128, 224.
valuation of, 228.

Land board

expenditure on account of, 540, 688.
office accommodation provided for, 460, 727.

Land grants

abolition of bonus for employment of convicts on, 220.
alienation of, prohibited for fixed period, 224.
at Port Stephens, 38 *et seq.*
criticism in *Monitor* newspaper *re*, 184.
equality of grantees and purchasers proposed, 220, 225, 230.
instructions *re*, to naval officers, 597.
issue of title deeds to, 228.
minimum age of grantees, 228.
modifications in instructions *re*, 219 *et seq.*
objections of Darling, Governor, to, for absentees, 306, 434.
prohibition of—
 near military works, 380.
 to absentees, 532.

Land grants

proposals for—
 to clergy, 772, 773, 774, 777.
 as gratuities to civil servants, 77, 78, 568 *et seq.*
quit rents due on, 689.
regulation of area of, 222.
rent to be paid on, before valuation, 237.
reservation of crown rights in, 223.
restriction of, on water frontage, 128.
return of, 6, 7, 12, 13.
road formation in, 223.
temporary limitation in issue of, 5, 435.
to Blaxland, J., at Sydney, 573, 577, 578, 580.
to clergy, 129, 130, 464.
to Forbes, F., 6, 251, 269.
to Macarthur, John, at Cawdor, 28 *et seq.*
to military officers, concessions on, 485, 486, 532, 596.
to missionary societies, 14, 15, 107 *et seq.*

Land revenue, collector of

appointment of—
 by Darling, Governor, 240, 241.
 instructions *re*, by Bathurst, Earl, 229, 232, 233, 613, 617.
expenditure on account of, 540.
location of office of, in barrack square, 459, 460.
monies received by, 585.
reasons for appointment of, 241.
salary of, 585.

L'Ange Gardien, ship

departure of, for south seas, 476.

Large, John

reduction of sentence on, 506.

L'Astrolabe, French corvette

visit of, in Australian waters, 304.

Lawless, Francis

land grant to, 6.

Lawson, William

criticism in *Australian* newspaper of, 319.
evidence of, in suit Broadbear, R., and wife *v.* Macarthur, Jas., and ors., 334, 343.
letter to, from Macquarie, L., 34.
magistrate, 59, 334.
memorial from, to Bathurst, Earl, 32.
property of, 33.
punishment of Broadbear, R., proposed by, 357.
request of, for land grant, 34.
services of, 32, 33.
sitting magistrate at trial of Broadbear, R., and wife, 326.

Layton, ship

despatch *per*, 147.

Le Bemi, Peter

salary of, as draftsman, 666.

Le Comete, ship

departure of, for south seas, 476.

Lees, Elizabeth

payment of wages to, at orphan school, 353.

Legge, H.

letter from, to Croker, J., 621.

Legge, Robert

recommendation in favour of, and sisters,
162.

Le Telegraphe, ship

departure of, for south seas, 475.

Levey, B.

character of, 81.
client of Wentworth, W. C., 81.
letter from, to Moore, W. H., 82.
windmill erected by, at Sydney, 81, 82.

Lewis, J. M.

letter from, to Croker, J., 621.

Lewis, T. Frankland

letter from—
to———, 552.
to Hay, R. W., 725.

Liddington, William

execution of death sentence on, for piracy,
157, 158.

Lieutenant-governor

abolition of office of, 242, 635, 695.
legal difficulties in appointing successor to,
in executive council, 634 *et seq.*

Lindesay, Patrick (lt.-col., 39th regt.)

legal difficulties *re* appointment of, to executive council, 634 *et seq.*
letter to—
from Ovens, J., 730.
from Stephen, F., 729.

Liscombe, John

land grant to, 6.

Lithgow, William

acting clerk of council, 371.
duties of, 250.
letter from—
to Darling, Governor, 144, 575.
to Macleay, A., 150, 163.
magistrate, 59.
nomination of, as director of bank of
N.S.W., 520.
report by—
on claims of Blaxland, J., 575 *et seq.*
on malpractice of Dangar, H., 150 *et seq.*
on valuation of convict labour, 163.
salary of, 250, 251.
separation of office of accounts from charge
of, 249, 250, 251.

Live stock

claim by Blaxland, J., for loss of horses,
574 *et seq.*
importation of—
by Bettington, J., & Co., 474.
by Hooke, J., 456.
payment of superintendents of, 660.
proceeds of services of stallions, 542, 689.
reduction of establishments for, 660, 661.
return of, at Bathurst and Wellington
valley, 662.
sales of, by government, 50, 58, 94, 542,
661, 689.

Liverpool

assault committed by Mackaness, J., on
Foster, W., at, 744, 746, 747.
convicts victualled by government at, 305.
expenses of quarter sessions dinner at, 171.
proposal for stipendiary magistrate at, 670.
troops stationed at, 276.

Liverpool plains

exploration of country north of, 619.

Lockyer, Edmund (major, 57th regt.)

magistrate, 59.
report by, on King George's sound, 272,
273.
return of, to Sydney expected, 189.

Logan, Patrick (capt., 57th regt.)

commandant at Brisbane, 524.
commendation of services of, 524, 525.
magistrate, 59.
naming of river in compliment to, 525.

Logan river

naming of, 525.

London missionary society

land grant to, 14.
letter from, to Marsden, Revd. S., 475.
reservation to be made in grant to, 15.

Longbottom

convicts victualled by government at, 303.
troops stationed at, 276.

Louisa, ship

arrival of, 630.
convicts *per*, 1.
despatch *per*, 504.

Low, Robert

magistrate, 59.

Lowe, Nathaniel (lieut., 40th regt.)

magistrate, 59.
presence of, at inquiry *re* shooting of native, 402.
shooting of native by mounted police under, 179, 399 *et seq.*
trial and acquittal of, for murder, 317, 400.

Lucy Ann, brig

purchase of, by government, 549.
tonnage of, 550.

Lusk, —

complaint of, *re* master of ship *Midas*, 218.

Lynch, Charles

arrest of Wentworth, W. C., by, 730 *et seq.*
instructions given to, 730.
sentry at house of chief justice, 730.

Macallister, Lachlan

allegations against, by Wentworth, W. C., 328.
appointment of, as magistrate for district of Argyle, 333.
date of swearing in, as magistrate, 347.
magistrate, 59.
punishment of Broadbear, R., proposed by, 357.
report of proceedings in supreme court in case Broadbear, R., and wife against, 324 *et seq.*
sitting magistrate at trial of Broadbear, R., and wife, 326.

Macarthur, Edward

plan of, for formation of militia, 63.

Macarthur, James

allegations against, by Wentworth, W. C., 328.
application of, for land grant, 8 *et seq.*
capital possessed by, 10.

Macarthur, James

land to be granted to, 437.
letter to—
from Ovens, J., 12.
from Macleay, A., 12.
magisterial jurisdiction of, 323.
magistrate, 59.
memorial of—
to Bathurst, Earl, 9.
to Brisbane, Sir T., 10.
punishment of Broadbear, R., proposed by, 357.
report of proceedings in supreme court in suit of Broadbear, R., and wife against, 324 *et seq.*
reservation of land ordered for, 12.
return of lands held by, 12.
sitting magistrate at trial of Broadbear, R., and wife, 326.
statement by, *re* land grants at Cawdor, 28.

Macarthur, John

association of Scott, T. H., with, 190.
criticism of N.S.W. bill by, 657.
grant to, of lands at Cawdor, 28 *et seq.*
purchase of lands by, 29.
return of lands held by, 13.

Macarthur, William

application of, for land grant, 8 *et seq.*
capital possessed by, 10.
evidence of, in suit Broadbear, R., and wife against Macarthur, Jas., and others, 335.
land to be granted to, 437.
letter to, from Ovens, J., 12.
magistrate, 59.
memorial of—
to Bathurst, Earl, 9.
to Brisbane, Sir T., 10.
reservation of land ordered for, 12.
return of lands held by, 12.

Mackaness, John (sheriff)

assault committed by, on Foster, W., 744, 746, 747.
association of, with Wentworth, W. C., and Wardell, R., 98, 191, 638.
casting vote in favour of resolutions of turf club given by, 643.
censure of, for neglect of gaol, 173, 583.
censure passed on, by Goderich, Viscount, 638, 640.
claim—
of, to salary as provost-marshal, 168, 171, 582.
on, for payment of annuity, 423.

Mackanness, John (sheriff)

- conduct—
 - of, 191, 638.
 - of, at magistrates' dinner at Liverpool, 746.
- demand made by, for explanation from governor, 744, 745.
- disapproval of conduct of, at meeting to petition for trial by jury and elective assembly, 447.
- duties of, 169, 170.
- effect of dismissal of, on civil officers, 648.
- example afforded by case of, 784.
- instructions to, *re* duties of sheriff, 640.
- letter from—
 - to Darling, Governor, 640, 744.
 - to Macleay, A., 170, 171, 173, 174.
- letter to—
 - from Darling, Governor, 58, 639, 641, 745.
 - from Macleay, A., 172, 173.
 - from Steel, H., 536.
- meeting called by, after his dismissal, 785.
- petition from colonists presented by, 50, 57, 58.
- popularity of, 98.
- presence of—
 - at anniversary dinner, 98, 191, 639.
 - at meeting of turf club, 639, 641.
- public opinion *re*, after dismissal, 785.
- refusal of charge of gaol by, 169, 173.
- removal of, from office as sheriff, 638, 639, 644, 646.
- resolutions passed by turf club, signed by, 641, 644.
- responsibility of, for control of gaol, 174, 583.
- salary of, 168, 170, 582.
- travelling allowances claimed by, 170, 171, 582.
- vice-chair taken by, at dinner of turf club, 642.

Macleay, Alexander (col. secretary)

- evidence of, in suit Broadbear, R., and wife *v.* Macarthur, Jas., and ors., 346.
- impertinent letter written to, by Cooper, D., 81.
- letter from—
 - to Crawford, R., 46.
 - to Darling, Governor, 144.
 - to Halloran, L. H., 70, 72.
 - to Holland, J., 205.
 - to Macarthur, James, 12.
 - to Mackanness, J., 172, 173.
- letter to—
 - from Bowman, J., 469.
 - from Burnett, J., 232.
 - from Busby, James, 758.

Macleay, Alexander (col. secretary)

- letter to—
 - from Campbell, J. T., 458, 459.
 - from Carter, W., 134, 174, 479, 746.
 - from Cookney, G., 528.
 - from Crawford, R., 45, 46.
 - from Dumaesq, W., 163, 659.
 - from Forbes, F., 807.
 - from Foster, W., 746.
 - from Hely, F., 663.
 - from Holland, J., 61, 201, 314.
 - from Icely, T., 186.
 - from Jones, R., 161.
 - from Lithgow, W., 150, 163.
 - from Mackanness, J., 170, 171, 173, 174.
 - from Mathew, D. D., 313.
 - from Moore, W. H., 400, 405, 406, 412, 701.
 - from Oxley, J., 30, 41, 42, 561.
 - from Rous, H. J., 161.
 - from Rylie, S., 660, 755.
 - from Scott, T. H., 750.
 - from Stewart, W., 150, 491, 755.
 - from Wetherall, F. A., 161.
- magistrate, 59.
- negotiations by, with Forbes, F., *re* stamp duty on newspapers, 374, 375, 376, 386, 394, 395.
- prosecution of, by Wardell, R., and Wentworth, W. C., for libel, 692 *et seq.*
- report by, on office of architect, 528.
- request from, to Forbes, F., to try Wardell, R., 429 *et seq.*

MacLeod, Alexander

magistrate, 59.

MacLeod, Archibald

magistrate, 59.
voting by, on resolutions of turf club, 643.

MacLeod, Donald (surgeon)

arrival of, as staff surgeon, 767.
objections to appointment of, as principal surgeon, 83, 798, 799, 800, 801.
immorality of, 798.

Macquarie, Lachlan (governor)

dismissal of Moore, W. H., by, 700, 701, 702.
land grant to Bligh, W., at Parramatta resumed by, 18, 20.
letter from, to Lawson, W., 34.
regulations by, *re* assignment of convicts, 116.

Macqueen, T. Potter

- capital and stock possessed by, 633.
- land—
 - granted to, 186.
 - to be granted and sold to, 632 *et seq.*
- letter—
 - from, to Horton, R. W., 632.
 - to, from Stanley, E. G., 633.
- obstructions by Dangar, H., to selection of land for, 150 *et seq.*

Magistrates

- appointment of stipendiary magistrates, 670.
- control of gaol by, 174, 175.
- criticism in *Monitor* newspaper *re*, 182, 183.
- decision of Stephen, J., *re* treatment of convicts by, 188, 191, 206, 259 *et seq.*
- expenditure on account of, 93.
- number of, in colony, 51, 56.
- proposed appointment of stipendiary magistrates, 422.
- return of, 59.

Magnet, ship

- despatch *per*, 143, 147, 148, 149, 156, 158, 162, 166, 168, 176, 177, 178, 185, 187, 189, 194, 206.

Mahoney, Michael

- land grant to, 7.

Malays

- trade with, proposed at Port Essington, 316.

Manlius, ship

- convicts *per*, 1.
- despatch *per*, 205, 210, 211, 212, 214, 215, 216, 217, 218, 219, 230, 234, 235, 238.

Market values

- of agistment, 754.
- of building material, 164, 671.
- of horses, 275.
- of insurance, 790.
- of labour, 163, 164, 671.
- of necessaries of life, 775.
- of passages to colony, 486.
- of shipping, 301, 302.
- of sperm oil, 790.
- of spirits, 538.

Marquis of Huntly, ship

- despatch *per*, 2, 5, 8, 14, 15, 16, 23, 38, 43, 47, 49, 50, 60, 62, 63, 67, 72, 73, 75, 76, 79, 81, 83, 84, 85, 86, 88, 96, 102, 103, 104, 105.
- sailing of, 104.

Marquis of Hastings, ship

- convicts *per*, 1.
- despatch *per*, 239.

Marriages

- approval of encouragement of, 211.
- criticism in *Monitor* newspaper *re* control of, 184.
- disproportion of sexes in colony, 184.
- validity of, performed by Therry, Revd. J. J., 373.

Marsden, Reverend Samuel

- engagement of Cowper, Revd. W., by, 748, 755, 760.
- inducements offered to, on appointment, 775.
- land held by, 130.
- letter to, from London missionary society, 475.
- particulars relating to, 778.
- report on French enterprise in south seas received by, 475.
- statement by, *re* his conduct as magistrate, 234.

Martin, George

- refusal of petition of, for emancipation, 423.

Mary Elizabeth, brig

- detachment of, for Port Essington, 304, 316.
- inability of, to find settlement at Raffles bay, 795.
- property of government, 304.
- tonnage of, 550.
- voyage of—
 - to Melville island for relief, 794.
 - to Raffles bay, 529.

Mathew, Daniel Dering

- affidavit of, 313.
- complaint of, against judgments in court of request, 311 *et seq.*
- criticism of complaint of, withheld, 627.
- judgment against—
 - in *Bluc. W., v. Mathew*, 312, 314.
 - in *Dowling v. Mathew*, 311.
- letter from, to Macleay, A., 313.

Matthews, —

- protest by, *re* removal of assigned servants, 487.

Maxwell, John

- fixed salary for, 660.
- superintendent of stock, 660.

Mayer, George

- letter—
 - from, to Hay, R. W., 148.
 - to, from Pawley, G., 148.

McDaniel, Richard

police convicted for manslaughter of, 598.

McDowall, —

dispute of, with master, 593.
surgeon superintendent of ship *Harmony*, 593.

McGarvie, Reverend John

approval of allowance towards salary of, 218.

McHenry, John

magistrate, 59.

McIntosh, Sir James

support from, expected for assembly and trial by jury, 97.

McIntyre, Peter

agent for Macqueen, J. P., 150, 632.
application for land for, 633.
complaint of, against Dangar, H., 149 *et seq.*, 500.
conduct of, 500.
transmission of letter from, 713.

McKean, James

payment of wages to, at orphan school, 353.

McLellan, John

claim made by, on Armstrong, J., for clothes supplied, 424.

McVitie, Thomas

magistrate, 59.

Mears, Reverend M. D.

land held by, 130.
particulars relating to, 778.

Meehan, James

memorandum by, *re* land grant to Blaxland, J., 580.

Melville island

abandonment of, proposed, 795.
advance from revenue on account of, 92.
adverse reports from, 794 *et seq.*
communication with, 303, 796.
convicts employed at, 303, 305.
expense of conveyance of stores to, 145, 544.
murder of surgeon and commissariat clerk at, 794.
necessity for vessel to be stationed at, 110, 304, 550.
object of settlement at, 796.
relief measures for settlement at, 794, 795.

Melville island

relief of garrison at, 214.
report from, 551.
salary—
 of commandant at, 112, 214.
 of surgeon at, 214.
ship of war to visit, 763.
troops stationed at, 276, 303.
unsuitability of, for settlement, 796.

Mermaid, schooner

detachment of, to Melville island, 304.
property of government, 304.
tonnage of, 550.

Mermaid, ship

despatch *per*, 551, 625, 627, 630, 668, 671, 685, 690, 695, 713, 725, 727, 734, 735, 739, 740, 741, 742, 762, 763, 767, 768, 770, 779, 780, 781.

Meurant, Frederick

report *re*, 584.

Midas, ship

misconduct of master and surgeon of, 218.

Middleton, —

dispute of, with surgeon, 593.
master of ship *Harmony*, 593.

Middleton, Reverend G. A.

land held by, 130.
resignation of, 762.

Military

• See also "Regiment, —."
allowances to officers of, as magistrates, 422, 670.
concessions to officers of, on land grants, 485, 595, 596.
criticism in *Monitor* newspaper *re* appointment of, as magistrates, 182.
defences of Sydney and Port Jackson, 119, 120, 594.
deficiency of, 274, 307.
disbursements on account of, 91, 95.
expenditure on buildings for, 594.
maintenance of colonial regiments, 767.
proposal for deputy inspector of hospitals, 84.
reservation of land for purposes of, 380.
returns of, 177, 270, 276, 603, 792.
sentry posted at house of chief justice, 728 *et seq.*
separation of office of accounts from auditor, 249, 250.
status of alien officers, 451.
transmission of monthly returns of, 76.
treatment of, by civil surgeons, 83.

Militia

objections to formation of, 63.

Mills, George G.

death of, by suicide, 782, 784.
financial embarrassments of, 784.
letter to, from Condamine, T. de la, 644.
magistrate, 59.
registrar of supreme court, 782, 784.

Mills, John

land grant to, 6.

Mills, steel grinding

importation of, 664.

Missionary society

See "Church missionary society," "London missionary society," "Wesleyan missionary society."

Mitchell, James (assist. surgeon)

recommendation of, for promotion, 264.

Mitchell, Thos. Livingstone (major)

allowances and salary for, 666.
appointment of, as deputy surveyor-general, 64, 118, 467.
letter from, to Murray, Sir G., 66.
positions offered to, 66.
salary granted to, 64, 118, 566.
testimonials in favour of, 64, 65, 118.

Molong plains

troops stationed at, 276.

"Monitor" (newspaper)

advocacy of cause of convicts in, 140, 259.
circulation of, 395.
criticism of government in, 80, 97, 178 *et seq.*
influence of, over convicts, 188, 259.
policy of, 101, 178.
reserve of land for mother of Forbes, F., reported in, 252.
statement by Stephen, J., reported in, 188, 206 *et seq.*, 259 *et seq.*
transmission of series of, 503.

Moon, —

land at Port Stephens claimed for, 38 *et seq.*, 439.
report by Oxley, J., on claims of, to land, 41, 42, 43.

Moore, Charles D.

dismissal of, as clerk of supreme court, 643, 646.
letter to, from Condamine, T. de la, 645.
secretary of turf club, 643, 646.
voting by, on resolutions of turf club, 643.

Moore, Thomas

magistrate, 59.

Moore, William Henry

appointment of—
as attorney-general, 199, 418, 700.
as crown solicitor, 448.
commission of, as attorney-general, 200.
confirmation of report in *Monitor* newspaper by, 263.
dismissal of, by Macquarie, L., 700, 701, 702.
employment of, 193.
incapacity of, to control legal proceedings, 82.
inquiry by, *re* murder of native, 179, 399 *et seq.*
letter from—
to Close, E. C., 406, 411.
to Darling, Governor, 263, 701.
to Macleay, A., 400, 405, 406, 412, 701.
letter to—
from Close, E. C., 411.
from Levey, B., 82.
offices held by, 197.
participation of, in proceedings of turf club, 703.
suspension of, as crown solicitor, 643, 646, 700 *et seq.*
voting by, on resolutions at turf club, 643.

Moreton bay

convicts employed at, 302, 305.
disadvantages of site of Brisbane at, 523.
discipline of convicts at, 106.
naming of localities at, 523, 524.
new settlement at, 523.
payment to pilot at, 165.
report on pine logs from, 620, 621.
troops stationed at, 276, 302.
vessel sent every two months to, 303.
visit—
of Darling, R., to, 417, 523.
of first warship to, 524.

Morisset, James T. (lieut.-colonel)

appointment—
as superintendent of police, to be kept for, 247.
of, as inspector of penal settlements, 461.
of, as superintendent of police, 561, 793.
employment of, 793.
objections to appointment of, to command at Norfolk island, 112, 562, 566.
proposal by, for tread mill at Norfolk island, 315.
salary granted to, 112, 271, 561, 566.
travelling expenses for, 461.

Mosman, A.

recommendation in favour of, 625.

Muckle, George

land grant to, 7.

Muldoon, Thomas

sentence passed on, 117.

Murdock, James

land grant to, 7.

Murdock, Robert

agent proposed by Stirling, R., 704, 705.

Murdoch, Robert Wallace

recommendation of, for land grant, 417.

Murphy, Reverend Roger

non-arrival of, 531, 567.

Murray, A.

land grant to, 7.

Murray, Laythrop

editor of *Colonial Times* newspaper in Tasmania, 190.

imprisonment of, for forgery, 190.

Murray, Sir George

letter—

from, to Hay, R. W., 64, 65.

to, from Mitchell, T. L., 66.

Murray, Terence (paymaster, 48th regt.)

recommendation of, as military settler, 781.

Museum

instructions *re* establishment of, 210.

Napper, John J.

pardon for, 272.

Naturalisation

proposed issue of letters of, 451.

Naval officer

abolition of office of, 245, 246, 248.

expenditure on account of, 472.

inquiry into department of, 245, 247, 418.

Navy

importance of King George's sound as naval station, 273.

instructions *re* land grants to officers of, 597, 668.

practice of granting lands to captains of, 306.

ship of war to visit N. Australia, 763.

stores—

required for, 141, 497.

supplied to, at Sydney, 783.

vessel of, required in N. Australia, 316.

Navy, commissioners of

letter—

from, to Croker, J., 621.

to, from Darling, Governor, 8, 73, 218, 533, 593.

New South Wales bill

criticism of, 654 *et seq.*

Newcastle

allowance to commandant of troops at, 422, 670.

appointment of superintendent of roads at, 268, 615.

commandant at, 33.

convicts employed at, 302, 305.

discovery of overland route to, from Bathurst, 33.

expense of conveyance of coal from, 145.

proposed visit of Darling, R., to, 417.

sale of crown live stock at, 661.

sales of coal at, 58, 94, 542.

stipendiary magistrate appointed to, 670.

travelling expenses to, 135, 170.

troops stationed at, 276, 302.

Newton, Thomas

burial of murdered native by, alleged, 404.

witness proposed at inquiry *re* shooting of native, 403, 404.

New Zealand

recapture of brig *Wellington* at, 103, 160.

Norfolk island

appointment proposed of Morisset, J. T., to command at, 112, 562, 566.

character of convicts at, 106.

criticism in *Monitor* newspaper *re* condition of, 183.

decision against sending tread mill to, 315.

establishment at, 566.

exclusion of women from, 105, 106, 450, 562.

insurrection of convicts at, 266, 603.

morals of convicts at, 562.

Norfolk island

- no mitigation of sentences of convicts at, 36.
- number of convicts at, 105, 267, 303, 305.
- plans and estimates for buildings at, 271, 622.
- salary of commandant at, 113, 561.
- seizure of brig *Wellington* by convicts on voyage to, 103, 104.
- troops stationed at, 276, 303.
- vessel sent quarterly to, 303.

Norman, Reverend J.

- complaint of, *re* master of ship *Midas*, 218.

North Australia

- See "Melville island," "Port Essington," "Raffles bay."

North, Saml. (lieut., N.S.W. veterans)

- application from, to sell commission, 267, 308.
- appointment of, to charge of bonded stores, 247, 248, 371.
- letter from, to Condamine, T. de la, 267, 371.

Norton, James

- letter from, to Darling, R., 481.
- opinion of—
 - re* chairmanship of bench of magistrates, 678.
 - re* utility of prosecuting Wardell, R., 478.
- report by, on proposed prosecution of Wardell, R., for libel, 481 *et seq.*

Oakey, Joseph

- master of H.M.S. *Tees*, 779.
- memorial from, 779.

Observatory

- additions to, 679.
- expenditure on account of, 541, 689.
- transmission of observations at, 563, 679.

Ogilvie, Peter (assist. surveyor)

- appointment of, 124.
- salary and allowances of, 666.
- testimony in favour of, 124, 125.

Ogilvie, William (lieut., R.N.)

- magistrate, 59.

O'Halloran, John

- free pardon for, 516.

O'Neil, James

- death sentence passed on, for piracy, 157.

Onslow, A. P.

- appointment of, as surveyor of customs, 246, 248.
- resignation of, 518.

Order, general

- from horse guards, *re* concessions on land grants to half-pay military officers, 485, 596.

Orders, government and general

re—

- assignment of convicts and discipline at penal settlements, 166 *et seq.*, 488.
- departure of Stewart, W., 694.
- naming of localities at Moreton bay, 524.
- regulations—
 - for assignment of convicts, 675.
 - for issue of tickets of leave, 3 *et seq.*
- rescission of act imposing stamp duty on newspapers, 392.
- resolutions of turf club, 646.
- surgeons and masters of convict ships, 8.
- suspension of sale of land, 255.

O'Reilly, Anthony

- payment to be made to, 780.

Orella, ship

- despatch *per*, 791, 792, 793, 797, 799, 802, 812, 814, 815.

Ormiston, Robert

- recommendation of, as a settler, 506.

Orpen, D. C.

- land grant to, 7.

Orpen, Samuel

- land grant to, 7.

Orphan schools

- charge on revenue for upkeep of, 538, 542.
- improvement in management of female orphan school, 549.

Orr, —

- recommendation of, for land grant, 374.

Ovens, John (brigade major and capt., 74th regt.)

- letter from—
 - to Cookney, G., 528.
 - to Macarthur, J. and W., 12.

Ovens, John (lieut., 57th regt.)

- letter from, to Lindsay, P., 730.
- report by, on arrest of Wentworth, W. C., 730 *et seq.*

Ovens, Mary

money received on account of, 103.

Owens, John

conviction of, for manslaughter, 598 *et seq.*
 memorial from, to Wellesley, Marquis, 598.
 pardon for, 598.

Oxley, John (surveyor-general)

defence of conduct of Dangar, H., by, 153,
 501.

estimates by, for water supply for Sydney,
 367 *et seq.*

letter from—

to Darling, Governor, 365, 367.

to Macleay, A., 30, 41, 42, 561.

letter to—

from Brisbane, Sir T., 269.

magistrate, 59.

report by—

re land grants at Cawdor to Macarthur,
 J., 28.

re land granted to Bligh, W., 561.

re lands claimed at Port Stephens, 41,
 42, 43.

re valuation of public property at Cawdor,
 30.

re water supply for Sydney, 365 *et seq.*

salary, fees, and allowances of, 665, 666,
 667.

Palmer, — (Lieutenant, R.N.)

magistrate, 59.

Palmer, George T.

punishment of Broadbear, R., proposed by,
 357.

sitting magistrate at trial of Broadbear, R.,
 and wife, 326.

Palmer, John (assist. com. genl.)

magistrate, 59.

punishment of Broadbear, R., proposed by,
 357.

sitting magistrate at trial of Broadbear, R.,
 and wife, 326.

Palmerston, Viscount

letter from, to Hay, R. W., 38.

Panton, George

application from, for redress of grievances,
 690, 691.

letter to, from Stanley, E. G., 691.

Park, Alexander

land grant to, 7.

Parramatta

convicts victualled by government at, 305.
 expenses—

of executions at, 171.

of quarter sessions dinner at, 171.

of weaving factory at, 144.

grant to Bligh, W., at, 17 *et seq.*, 560,
 561.

land held by Macarthur, John, at, 13.

residence for superintendent of works at,
 175.

sale of crown live stock at, 661.

troops stationed in district of, 276.

Pawley, G.

letter from, to Mayer, G., 148.

Pedder, John Lewis (chief justice, Tasmania)

bill for regulation of press certified by, 207,
 261, 277.

postponement of trial of Wardell, R., for
 libel on, 479.

Penrith

proposal for stipendiary magistrate at, 670.

Philip Dundas, ship

voyage of, with relief to northern settle-
 ments, 795.

Phillips, Michael

application from, for land at Western port,
 132 *et seq.*

capital possessed by, 466.

letter—

from, to Bathurst, Earl, 132, 466.

to, from Hay, R. W., 133.

recommendation—

in favour of, 205.

of, for land grant, 465.

Phoenix, hulk

convicts employed on, 305.

expenditure on account of, 540.

expense of fuel and light on, 145.

Phoenix, ship

despatch *per*, 672, 789.

Pierce, Paul

proposal from A.A. company *re* family of,
 309, 310.

Piper, John

approval of dismissal of, 592.

balance due to government by, 245.

inquiry into department of, 245, 247.

magistrate, 59.

suspension of, as naval officer, 245, 247.

Planta, J.

letter from, to Stanley, E. G., 668.

Police

appointment of superintendent of, at Campbelltown, 588.

approval of reforms and salaries of, 419.

cost of establishment of, 377, 382, 398, 399.

division of Sydney for purposes of, 309.

expenditure on, 519, 540, 687, 689.

office accommodation for, 460, 727.

report *re* killing of man by, in execution of duty, 616.

residence for superintendent of, 460.

Police, mounted

advantages in employment of, 63.

detachment of—

at Campbelltown, 588.

in Tasmania, 111.

employment of soldiers in, 275.

equipment of, 111, 183, 184.

manufacture of boots and clothing for, 663, 664.

numbers of, 111.

pay of, 88.

proposed formation of, 87.

purchase of horses for, 275, 540.

recruiting for, from regiments, 591.

services of, 87.

shooting of native by, 179, 399 *et seq.*

Port Essington

brig *Mary Elizabeth* attached to, 316.

charter of vessel to convey stores to, 302, 316.

commandant appointed at, 316.

communication with, 303.

convicts to be sent to, 303, 305.

departure of expedition to found settlement at, 315.

numbers of military and convicts sent to, 315.

recommendation of, as site for settlement, 795.

trade proposed at, 316.

troops to be stationed at, 276, 303.

Port Jackson

defences of, 120.

Port Macquarie

abolition of penal settlement at, proposed, 523.

discipline of convicts at, 106.

number of convicts at, 274, 302, 305, 522, 524.

transfer of convicts from, 35, 36, 523.

troops stationed at, 276, 302.

vessel sent monthly to, 303.

visit of Darling, R., to, 417, 522.

Port Stephens

land grants at, 38 *et seq.*

Portland, head

allowance for salary of minister at, 218.

Post office

cost of conveying public letters, 95, 472.

criticism in *Monitor* newspaper *re*, 183.

report required *re* revenue of, 671.

Power, Reverend Daniel

advance made to, 567.

approval by, of delay in completing R.C. chapel, 503.

increase in salary of, proposed, 567.

Presbyterian church

allowance for salary of minister of, 218.

expenditure on account of, 541, 688.

payment to minister of, 777.

Press, the

bill—

for imposing stamp duty on newspapers, 374 *et seq.*, 380 *et seq.*, 391 *et seq.*

for regulation of, in Tasmania, 207, 261, 277.

circulations of, 395.

draft of clauses in bill for regulation of, 285.

information supplied to, by judges, 207, 208, 261, 375, 517.

objections of Forbes, F.—

to legislation *re*, 79, 80.

to licensing of, 280, 283.

necessity for regulation of, 79, 97, 98, 100, 101, 192, 279.

power of, 97, 99, 191, 192.

proposal for bill for regulation of, 277 *et seq.*

reasons of Forbes, F., for refusal to certify bill *re* press, 289 *et seq.*, 375 *et seq.*

Prince Regent, ship

convicts *per*, 1.

Princess Charlotte, ship

convicts *per*, 1.

despatch *per*, 177.

Printing

expenditure on, for government, 519, 541.

Prout, —

recommendation in favour of, 457.

Provost-marshall

abolition of office of, 582.

Public works

completion of, by contract proposed, 674.

value of materials for, 163, 164, 671.

Puckeridge, William

commutation of death sentence on, 300, 626.

Queen Charlotte, brig

despatch *per*, 110, 111, 112, 113, 114, 118, 119, 122, 125, 128, 129, 130, 134, 135, 141, 146.

first colonial built vessel to sail for England, 147.

sailing of, 147.

Queensland

See "Moreton bay."

Raffles bay

abandonment of settlement at, proposed, 795, 796.

adverse reports from, 794 *et seq.*

difficulty in finding settlement at, 795.

foundation of settlement at, 529.

outbreak of scurvy at, 794.

relief measures for settlement at, 794, 795.

ship of war to visit, 763.

Rainbow, H.M. ship

inability of, to find settlement at Raffles bay, 795.

stores required by, 141.

visit of, to northern settlements, 417, 524.

Raine, Elizabeth (Mrs.)

character of, 104.

resignation of, as matron of factory, 104.

Raine, Thomas

voting by, on resolutions of turf club, 643.

Ralfe, James (assist. surveyor)

salary and allowances of, 666.

Ranken, Arthur

land grant to, 7.

Rankin, George

magistrate, 59.

Ransley, George

proposal from A.A. company *re* family of, 309, 310.

Rapsey, —

purchase of land order from, by Dangar, H., 152, 500, 501.

Raymond, James (John)

appointment of, as surveyor of customs, 518.

free passages granted to, 49.

increase in annual allowance to, 47.

instructions *re* employment of, 235, 441,

442.

letter from, to Dumaresq, H., 48.

recommendation in favour of, 48, 442.

refusal of increased allowance for, 147.

request of, for increased allowance, 48.

Reddall, —

voting by, on resolutions of turf club, 643.

Reddall, Reverend Thomas

magistrate, 59.

particulars relating to, 778.

Reed, Thomas

recommendation of, for land grant as naval settler, 631.

Regent Bird, cutter

tonnage of, 550.

Regiment, 3rd

departure of last detachment of, 618.

detachment of, detained in Sydney, 275.

embarkation of division of, for Caleutta, 62.

relief of detachment of, at Melville island, 214.

Regiment, 30th

detachment of, detained in Sydney, 618.

Regiment, 40th

quarters of, in Tasmania, 110, 307.

Regiment, 47th

detachment of, detained in Sydney, 618.

Regiment, 57th

detachment of, at Melville island, 214.

headquarters of, 275.

Registrar of supreme court

appointment of, 782, 802, 805.

refusal of Forbes, F., to administer oaths of office to, 802 *et seq.*, 815 *et seq.*

Reid, D. (surgeon, R.N.)

land to be granted to, 434.

magistrate, 59.

Reid, James

evidence of, at inquiry *re* shooting of native at Wallis plains, 408.

Returns

- of applications for convicts, 676.
- of clergy, 778.
- of convicts—
 - at Port Macquarie, 524.
 - victualled by government, 305, 676.
- of crime, 182, 372, 677.
- of land held—
 - by clergy, 130.
 - by J. and W. Macarthur, 12.
 - by John Macarthur, 13.
- of land grants, 6, 7.
- of land sold by Brisbane, Sir T., 237.
- of live stock, 661, 662.
- of magistrates, 59.
- of military, 177, 270, 276, 603, 792.
- of religions and nationalities of convicts, 305.
- of revenue collected, 58, 92 *et seq.*, 542, 543, 688.
- of shipping belonging to government, 304, 550.
- of surveyor-general's department, 666.

Revenue, public

See "Finance."

Rice, T. Spring

- letter from, to Hay, R. W., 452.

Richards, James Byrn (assist. surv.)

- approval of salary of, 211.
- salary and allowances of, 666.

Ridgeway, John

- pardon for, 272.

Riley, Alexander

- land granted to, 631.

Roads and bridges

- appointment of surveyors of, 268, 614, 615.
- convicts employed on, 305.
- expenditure in department of, 541, 688.

Roberts, —

- leading article on ease of, in *Monitor news-* paper, 178.

Robertson, Archibald (ensign, 57th regt.)

- evidence of, at inquiry *re* shooting of native at Wallis plains, 408.
- refusal of, to answer question at inquiry *re* shooting of native, 402, 411.

Robison, E. (capt., veteran compy.)

- report on conduct of, 591.

Rodd, John (assist. surveyor)

- resignation of, 665.

Roman catholic religion

- expenditure on account of, 541, 688.
- report *re* missionary enterprise of, in south seas, 475.
- salary of chaplain for, 567, 777.
- temporary accommodation provided for, 503.
- tenders for completion of chapel for, 503.

Rooty hill

- convicts victualled by government at, 305.

Rose, —

- clerk in office of Wentworth, W. C., 785.
- toast given by, at emancipist dinner, 785.

Rossi, Francis N.

- appointment of—
 - as collector of customs, 652.
 - as controller of customs, 246, 248.
- land grant to, 7.
- leave granted to, on full pay, 244, 604.
- magistrate, 59.
- reforms in police department recommended by, 419.
- statement by, *re* alleged slave traffic in Mauritius, 422.

Rous, Henry John (captain, R.N.)

- captain, H.M. ship *Rainbow*, 161, 417, 524.
- compensation proposed by, for recapture of brig *Wellington*, 161.
- letter from, to Macleay, A., 161.
- naming of Stradbroke isle in compliment to, 524.

Royal staff corps

- charge for company of, 310.
- detachment of, in Tasmania, 110.
- expenditure on account of, 541, 687.

Rumker, Charles Stargard

- appointment of, as astronomer, 678.
- salary of, 563, 679.
- status of, as astronomer, 563.

Russell, Henry

- conditional pardon for, 84.

Ryan, William

- death sentence passed on, for piracy, 157.

Ryrie, James

- land grant to, 7.

Ryrie, Stewart (dep. asst. com.-genl.)

- appointment proposed of, to charge of military accounts, 251.
- desire of, to retire, 251.
- letter from, to Macleay, A., 660, 755.
- report by, on claims of Revds. Cowper and Hill, 755 *et seq.*

- Ryrie, William**
land grant to, 7.
- Sadleir, Richard**
land grant to, 7.
- Salisbury, William**
conviction of, for perjury, 404.
deposition of, *re* shooting of native at Wallis plains, 404.
sentence on, for theft, 406.
suggested witness *re* shooting of native by mounted police, 400, 406.
- Sampson, John**
advance on account of salary to, 515.
appointment of, as solicitor-general, 487.
- Sandwich islands**
report *re* proposed French settlement in, 475, 476.
- Savage, George Thomas**
steward of turf club, 642.
withdrawal of, from dinner, 642.
- Scarr, John**
land grant to, 7.
- School**
progress of public school at Sydney, 238.
proposal for grammar school at Sydney, 68, 69, 70, 71.
- Scott, Robert**
magistrate, 59.
- Scott, Thomas Hobbes (archdeacon)**
alleged behaviour of, at female orphan school, 331.
appointment of, as King's visitor, 414 *et seq.*
association of, with Macarthur, J., 190.
complaint of—
 against Forbes, F., 190, 191.
 against judicial conduct of Stephen, J., 191, 319 *et seq.*, 321 *et seq.*, 768, 769.
evidence of, in suit Broadbear, R., and wife against Macarthur, Jas., and ors., 344.
imputations made against, by Wentworth, W. C., 321 *et seq.*
letter from—
 to Darling, Governor, 24, 319, 774.
 to Macleay, A., 750.
letter to—
 from Brisbane, Sir T., 29, 30.
 from Hill, R., 753.
- Scott, Thomas Hobbes (archdeacon)**
proposals of—
 for civilising natives, 433.
 for maintenance of clergy, 771, 774 *et seq.*
prosecution by, of Broadbear, R., and wife before bench of magistrates, 326, 327.
remarks by Stephen, J., on dispute of, with Walker, W., 263.
reply of Stephen, J., to complaint of, 389 *et seq.*
report—
 by, on claims of Cowper, Revd. W., and Hill, Revd. R., 750 *et seq.*
 on proceedings in prosecution of Broadbear, R., and wife by, 354 *et seq.*
resignation proposed by, 190.
selection of land for church and school at Cawdor by, 24 *et seq.*
- Seal of the territory**
return of, to England, 516.
- Secretary, colonial**
approval of new establishment for, 420.
changes in staff of, 44 *et seq.*
expenditure on account of, 92, 94, 472, 540, 688.
fees collected in office of, 542.
report on department of, 564, 565.
salaries of clerks of, 564, 571.
sentry posted at house of, 728 *et seq.*
transfer of duties from, 564.
- Secretary of state for colonies**
letter to, from Darling, Governor, 104, 189, 380, 492, 502.
- Segenhoe**
departure of exploring expedition from, 619.
- Seymour, Sir Michael**
refusal of land grant to, 434.
- Shairp, William**
land grant to, 7.
- Sheriff**
duties of, to be defined, 583.
expenditure in department of, 540.
fees collected in office of, 542.
responsibility of, for control of gaol, 174, 583.
- Shipping**
dues collected on, 542.
list of government vessels, 304, 550.
maintenance of, for government, 543.
vessels required for government purposes, 301, 302, 544.

Shoes

manufacture of, in colony, 662 *et seq.*

Shortt, Francis

claim—

made by, to land at Port Stephens, 38 *et seq.*

to land abandoned by, 535.

disallowance of claim of, to land, 438.

imprisonment of wife of, for larceny, 68, 168.

land granted to, 536.

letter from, to Bathurst, Earl, 38.

Simpson, Percy (lieutenant)

fixed salary for, as commandant at Wellington valley, 251, 604.

Sisters, whaling ship

compensation claimed by owners and crew of, 159, 161, 789, 790, 791.

cost of outfitting of, 790.

recapture of brig *Wellington* by master of, 103, 160.

Sloper, John

letter—

from, to Bathurst, Earl, 32.

to, from Hay, R. W., 35.

Smeathman, Thomas Charles

recommendation of, as settler, 254.

Smith, Charles

recommendation in favour of, 13.

Smith, Edward

reduction of sentence on, 506.

Smith, Henry (capt., 39th regt.)

adverse reports received from, 794 *et seq.*

appointment of, as commandant at Port Essington, 316.

commandant at Raffles bay, 794.

recommendation by, of Port Essington, 795.

Smith, Henry Gilbert

recommendation in favour of, 13.

Smith, John

death sentence passed on, for piracy, 157.

execution of sentence on, 158.

Smith, Reverend Elijah

particulars relating to, 778.

warrant of appointment for, as assistant chaplain, 504.

Society islands

report *re* proposed French settlement in, 475, 476.

Solicitor-general

proposal for abolition of office of, 448, 701.

salary of, 472.

separation of office of, from commissioner of court of request, 446, 487.

Somerset, Lord Fitzroy

letter from, to Hay, R. W., 781.

Sophia Matilda, H.R.H. Princess

support of application for land grant by, 628.

Sorell, William

influence of, in England, 190.

Specie and currency

coin provided for use in Tasmania, 237.

criticism in *Monitor* newspaper *re* circulation of, 183.

importation of British coin, 89, 95, 257, 258.

issue of notes by commissariat, 130 *et seq.*, 725, 726.

specimen of commissariat note, 132.

Speke, ship

report *re* master of, 73.

Spirits

amount of duties—

collected on, 542.

paid on, 89, 90, 92, 94.

claim of Icely, T., to refund of duties on, 763 *et seq.*

criticism in *Monitor* newspaper—

re control of traffic in, 185.

re duty on, 181.

duty and sale price of, 538.

effect of colonial distillation on, 537.

Springwood

troops stationed at, 276.

Stanley, E. G. (under secretary)

colonies placed in charge of, 622.

letter from—

to Cotes, Charlotte, 629.

to Darling, Governor, 1, 625, 626, 627, 630, 637, 646, 669, 671, 690.

to Macquenn, T. P., 633.

to Panton, G., 691.

letter to—

from Barrow, J., 669.

from Planta, J., 668.

Stanley, Thomas

commutation of death sentence on, 301, 626.

Statistics

population of colony, 54, 590.

Statutes, English

New South Wales bill, criticism of, 654
et seq.

transmission of, 103, 484.

Stedcomb (Studcombe), brig

capture of, by pirates, 110.

Steel, Henry

application from, for increase of salary, 536.
gaoler at Sydney, 172, 174.

letter from, to Mackaness, J., 536.

report by, on gaol, 172.

Stephen, Francis

appointment of, as clerk in supreme court,
680, 684, 728, 732, 733.

criticism of conduct of, 651, 727.

employment of, proposed, 651.

letter from, to Lindesay, P., 729.

objections of, to challenge by sentry, 728,
729.

patronage of, by Forbes, F., 727.

racing cup brought from England by, 642.

son of judge Stephen, 642.

support of, by Forbes, F., 693.

Stephen, James

letter to, from Darling, Governor, 650.

Stephen, John, junior

appointment of—

as commissioner for valuing lands, 563.

as registrar of supreme court, 782, 802,
805.

instructions given to, 807.

oaths of office taken by, 804.

refusal of Forbes, F., to administer oaths
to, 787, 802 *et seq.*, 813 *et seq.*, 815
et seq.

son of judge Stephen, 563.

Stephen, John (judge)

abuse of government and governor per-
mitted by, 548, 650.

adverse criticism of, 589, 650.

censure of, by Huskisson, W., 517, 770, 771.

complaint made by Scott, T. H., against
judicial conduct of, 191, 319 *et seq.*,
321 *et seq.*, 768, 769.

criticism of *Sydney Gazette* by, 718, 721.

Stephen, John (judge)

despatches *re.* reserved for consideration,
582.

exoneration of, from charges of corrupt and
dishonorable motives, 769.

expenses of, at quarter sessions, 135.

health of, 85, 649.

inadmissible evidence permitted by, 769.

information supplied to press by, 207, 261,
318, 319, 517, 650, 771.

instructions to jury by, at trial of Wardell,
R., 724.

interference of governor in law courts
alleged by, 207, 209, 260.

latitude allowed to Wardell, R., by, 719,
723.

letter from—

to Darling, Governor, 209, 390, 720, 737.

letter to—

from Darling, Governor, 208, 209, 390,
722, 736.

from Dumaresq, H., 263.

official censure passed on, 770, 771.

opinion of, *re* stamp duty on newspapers,
391, 393.

precedence of, 85.

refusal of, to give opinion *re* eligibility of
expirees as jurors, 737.

remarks by—

in case of Scott, T. H., *v.* Walker, W.,
263.

on trial of Wardell, R., for libel, 718,
720.

reply of, to complaint of Scott, T. H., 389
et seq., 413, 771.

request to, for confirmation of report in
Monitor newspaper, 206, 208, 209,
260, 263.

salary of, as acting judge, 15, 148, 437.

statement by, *re* rights of convicts, 188,
189, 191, 206 *et seq.*, 259 *et seq.*,
516.

trial by, of suit Broadbear, R., and wife *v.*
Macarthur, Jas., and ors., 324 *et*
seq.

Stewart, William (lieut.-governor)

appointment of, as collector of customs
proposed, 246.

commendation of services of, 694, 695.

departure of, 694.

detention of, at Sydney, 62.

expiration of commission of, as lieutenant-
governor, 242.

land—

grant to, 7, 176.

to be purchased by, 176.

letter from—

to Darling, Governor, 575.

to Macleay, A., 150, 491, 755.

Stewart, William (lieut.-governor)

orders issued on departure of, 694.
 proposed refund of forage allowance by,
 490 *et seq.*, 735.
 report by—
 on claims of Blaxland, J., 575 *et seq.*
 on claims of Revds. Cowper and Hill, 755
 et seq.
 on malpractice of Dangar, H., 150 *et seq.*
 testimony in favour of, 176, 491.

Stirling, James (captain, R.N.)

application from, to purchase land, 306.
 departure of, to found new settlement in
 N. Australia, 315.
 foundation of settlement at Raffles bay by,
 529.
 grant of land to, 597.
 instructions to, *re* new settlement in N.
 Australia, 316.
 land reserved for, 306.
 letter from, to Bathurst, Earl, 307.
 report by—
 on Swan river, 264, 265.
 on Raffles bay, 529.
 request of, for command at Swan river,
 306, 307.
 testimony in favour of, 265, 306.

Stirling, Robert (lieut., 3rd regt.)

agent for, 704, 705.
 application from, for land grant, 703 *et seq.*
 capital possessed by, 704.
 conduct of, in case of appointment of Mac-
 leod, D., 798 *et seq.*
 letter—
 from, to Hay, R. W., 704, 705, 714, 800.
 to, from Hay, R. W., 705.
 report on, sent to war office, 799 *et seq.*

Stradbroke, isle of

naming of, 523, 524.

Street, John

magistrate, 59.

Success, H.M. ship

departure of, with expedition for new settle-
 ment in N. Australia, 315.
 stores required by, 141.
 visit of, to Swan river, 264.

Sudds, Joseph

approval by Goderich, Viscount, of sentence
 passed on, 439, 440.
 impeachment of Darling, Governor, pro-
 posed in case of, 789.
 legality of sentence on, 440.

Sullivan, — (major)

recommendation of, as military settler, 446.

Supreme court

abolition of office of master of, proposed,
 679 *et seq.*
 appointment of registrar in, 802 *et seq.*,
 813 *et seq.*, 815 *et seq.*
 division of duties of judges in, 436.
 duties of officers of, 822, 823.
 expenditure on account of, 472, 540, 688.
 fees collected in office of, 542.
 ill-health of judges of, 85.
 officers of, 680 *et seq.*
 power of governor to make appointments
 in, 787, 804, 809.
 precedence of judges in, 85, 447.
 quashing of conviction of Broadbear, R.,
 and wife, 358 *et seq.*
 remission of sentences to be registered in,
 608.
 reorganisation of establishment for, 680 *et*
 seq., 802.
 report of proceedings in, in case of Broad-
 bear, R., and wife *v.* Macarthur, Jas.,
 and ors., 324 *et seq.*

Surgeons

appointment of staff surgeon, 767.
 orders *re* return of, to England after em-
 ployment on convict ships, 8.
 revision of salaries of, 84.
 treatment of military by civil surgeons, 83.

Surveyor-general

expenditure in department of, 92, 94, 472,
 540, 688.
 fees collected in office of, 542.
 officer of, to be appointed collector of in-
 ternal revenue, 613, 614.
 report on establishment of, 665, 666.

Swan, John

death sentence passed on, for piracy, 157.

Swan river

advantages of, for settlement, 265, 550.
 decision against formation of settlement at,
 740.
 objections to settlement of, 739, 740.
 possibility of French settlement at, 304.
 report on, 265.
 request of Stirling, J., for command at,
 307.

Sydney

abolition of assignment of convict servants
 to residents in, 136, 166 *et seq.*
 annual rental value of houses in, 368.
 application for warehouse site at, 553, 554,
 797.
 appointment of town surveyor for, 658.

Sydney

convicts victualled by government at, 305.
 cost of passage from England to, 486.
 defences of, 119, 120.
 division of, for police purposes, 309.
 gaol at, management of, 169 *et seq.*
 grammar school proposed at, 65, 69, 70, 71.
 houses in, number of, 368.
 land grant to Blaxland, J., at, 573, 577, 578, 580.
 museum to be established at, 210.
 public school at, 238, 239.
 residence for master attendant at, 175.
 settlements supplied from, 302, 303.
 troops stationed at, 274, 275, 276.
 watchhouses proposed at, plans of, 308, 309, 618.
 water supply for—
 private company to provide, 740, 741.
 reports *re*, 362 *et seq.*
 windmill proposed by Levey, B., at, 81, 82.

"Sydney Gazette and N.S.W. Advertiser" (newspaper)

circulation of, 395.
 criticism in, *re* press in India, 79.
 freedom of, from government control, 723.
 influence of, on juries alleged by judges, 718, 721.
 profits derived from, 398, 399.
 publication of act imposing stamp duty on newspapers in, 375, 378, 385, 392, 393, 394.
 transmission of copies of, 75, 104, 189, 380, 492, 502, 503.

Tamering, Henry

payment of wages to, at orphan school, 353.

Tasmania

application from Abbott, J., for employment in, 235, 236.
 bill for regulation of press in, 207, 208, 261, 277.
 claim for superintending road parties in, 125 *et seq.*
 cost of passage from England to, 486.
 importation of British coin to, 89.
 informers sent to, 616.
 instructions *re* keeping accounts in, 495.
 specie provided for use in, 237.
 troops stationed in, 110, 307, 476.
 warehouse of Australian trading company in, 554.

Taxation by representation

See "Assembly, legislative."

Taylor, Francis

witness proposed at inquiry *re* shooting of native, 403.

Taylor, John

recommendation of, as settler, 646.

Taylor, Sir Herbert

letter—

 from, to Hay, R. W., 109, 448, 801.
 to, from Darling, Governor, 267, 297, 307, 308, 317.

Tees, H.M.S.

memorial from master of, 779.

Telford, Thomas

letter from, to Hay, R. W., 23.

Therry, —

chairman at fortieth anniversary dinner, 785.

Therry, Reverend John Joseph

approval of action of Darling, R., *re*, 421.
 completion of R.C. chapel proposed by, 504.
 disapproval of conduct of, 372.
 emoluments of, 777.
 validity of marriages performed by, 373.

Thompson, T. (assist. surveyor)

appointment of, as assistant surveyor, 147.
 salary and allowances of, 666.
 testimony in favour of, 148.

Thompson (Thomson), Patrick

approval by Goderich, Viscount, of sentence passed on, 439.
 impeachment of Darling, Governor, proposed in case of, 789.
 legality of sentence on, 440.
 order for liberation of, 441.

Throsby, Charles

appointment of, to district of Argyle, 325, 333.
 magistrate, 59.

Throsby, Charles, junior

magistrate, 59.

Tibeando, John

memorial from, *re* conviction of police for manslaughter, 600.

Tickets of leave

- abuses in granting of, 2.
- annual return of, 83, 691.
- approval of regulations for, 494.
- criticism in press *re*, 80.
- criticism in *Monitor* newspaper *re* issue of, 181, 182.
- legal opinion *re* validity of, 622 *et seq.*
- opinion of chief justice *re* power of granting, 138, 605, 610 *et seq.*
- order announcing regulations for issue of, 3 *et seq.*

Tickets of occupation

See "Land."

Timber

- criticism in *Monitor* newspaper *re* royalty on, 181.
- report on Moreton bay pine, 620, 621.

Tobacco

- amount of duties paid on, 90, 92, 94, 542.
- duty on, criticism in *Monitor* newspaper of, 181.

Townshend, George

- land grant to, 7.

Townson, Robert

- magistrate, 59.

Trade and commerce

- alteration in conditions of, 775.
- circular despatch *re* regulation of, 234, 426, 508.
- control of trade at penal settlements, 167.
- fees collected from, 542.

Travers, Robert (lieut., N.S.W. veteran company)

- claim of, to allowance for superintending road parties, 125 *et seq.*, 494.
- letter from, to Arthur, G., 126.

Tread mill

- convicts employed on, 305.
- proposal for, in Sydney water supply, 364.
- use of, at Carters barracks, 241.

Treasurer, colonial

- confidential clerk for, 114, 461.
- expenditure on account of, 92, 94, 472, 540, 688.
- instructions to, *re* custody of public treasure, 520, 521.
- office of, located in barrack square, 459, 460.
- payments to be made by, 743.
- sentry posted at house of, 728 *et seq.*

Trial by jury

- acknowledgment of petition for, 443.
- petition for extension of, 50, 51 *et seq.*, 96 *et seq.*
- practice of, at quarter sessions, 52.

Tucker, J.

- letter from, to Croker, J., 621.

Turf club

- account of dinner held by, 642.
- government order *re* meeting of, 646.
- presence of Mackness, J., at meeting of, 639.
- resignation of governor from, 643, 644, 645.
- resolutions passed at meeting of, 641, 644.
- suspension of Moore, W. H., for participation in, 643, 646.
- voting of members at meeting of, 643.

Turner, —

- wages of, at orphan school, 353.

Turner, C. (asst. surgeon, r. artillery)

- claim of, for expenses in carrying despatches, 429, 634.
- letter from, to Hay, R. W., 429.

Underwood, Joseph

- owner of brig *Wellington*, 160.

Vale, Reverend Benjamin

- dismissal of Moore, W. H., for acting as counsel for, 701, 702.

Van Diemen's Land

See "Tasmania."

Veteran companies

- adverse criticism of, 86 *et seq.*
- allowances to officers of, 125, 126.
- augmentation of, 86, 590.
- character of men employed in, 449, 591.
- company of, in Tasmania, 110.
- disbandment of, proposed, 87, 591.
- expenditure on account of, 541, 687, 768.
- incompetence of men of, 86, 87.
- instructions for formation of, 449.
- pay of, 87.
- reply to adverse criticism of, 448 *et seq.*

Vincent, John (lieut.-general)

- letter from, to Hay, R. W., 162.

Vincent, Reverend John

particulars relating to, 778.

Volage, H.M. ship

appointment of commander to, 86.
stores required by, 141.

Wakefield, Joseph (capt., 39th regt.)

magistrate, 59.

Walker, James

magistrate, 59.

Walker, Richard

will and marriage certificate of, 637.

Walker, Thomas

land grant to, 7.

Walker, Thomas (D.A.C.G.)

magistrate, 59.

Walker, W.

additional land to be granted to, 630.
capital and land held by, 630, 631.
letter from, to Huskisson, W., 630.

Walker, William

death sentence passed on, for piracy, 157.

Walker, William

evidence of—
at prosecution of Broadbear, R., and wife, 326, 327, 355.
at prosecution of Macarthur, Jas., and ors. by Broadbear, R., and wife, 320.
in supreme court in Broadbear, R., and wife *v.* Macarthur, Jas., and ors., 330, 343.
insults given by, to Scott, T. H., 320.
memorial of, soliciting land grant, 714.
remarks by Stephen, J., on dispute of, with Scott, T. H., 263.

Wall, Charles Wm. (lieut.-col., 3rd regt.)

magistrate, 59.

Wallis plains

shooting of native by mounted police at, 179, 317, 399 *et seq.*
troops stationed at, 276.

Walpole, George

conviction of, for manslaughter, 598 *et seq.*
memorial from, to Wellesley, Marquis, 598.
pardon for, 598.

Walton, John

commutation of death sentence on, 146, 158, 531.
ringleader of pirates on brig *Wellington*, 104.

Ward, R.

letter from, to Hay, R. W., 205.

Wardell, Robert

abuse of government in open court by, 547, 548, 638, 650.
civil action against, relinquished by Carter, W., 480, 483.
condemnation of, by public, 192.
criticism by, of proposed stamp on newspapers, 375.
espousal of emancipist cause by, 97.
incapacity of crown law officers to oppose, 82.
information supplied to, by judges, 318, 319, 375, 650.
land grant to, 7.
latitude allowed to, by judges, 719, 723, 724.
meeting of turf club called by, 643, 644.
objections of Forbes, F., to, 694.
opposition of, to Arthur, G., 190.
postponement of trial of, 479.
position of, in colony, 180.
power of, in court, 694.
presence of, at meeting called by Mackaness, J., 785.
prosecution—
by, of Macleay, A., for libel, 692.
of, for libel on Carter, W., 82, 100, 278, 429 *et seq.*, 477 *et seq.*
of, for libel on government, 717 *et seq.*
support of Mackaness, J., by, 98, 191, 638.
trial of, for libel on Pedder, J. L., 479.
time proposed by, on drinking health of governor, 642.
utility of prosecution of, 478.
voting of, at meeting of turf club, 643.

Warner, John (lieut., veteran compy.)

magistrate, 59.

Warspite, H.M. ship

appointment of captain to, 86.
stores required by, 141.

Water supply

estimates for, 365, 369, 370.
private company proposed to provide, 740, 741.
reports *re.* for town of Sydney, 362 *et seq.*
revenue expected from, 370.

Watson, William

sentence passed on, 117.

Weatherboard hut

troops stationed at, 276.

Webb, William and Sarah

pardons for, 272.

Webber, J. P.

absence of, from inquiry *re* shooting of native, 401.
magistrate, 59.

Wellesley, Marquis

memorial to—
from petit jurors at trial of police, 600.
from police convicted of manslaughter, * 598.

Wellington, brig

compensation for recapture of, 159, 161, 789 *et seq.*
criticism *re* execution of pirates from, 180.
indulgence of convicts on, in Sydney gaol, 169.
seizure of, by convicts, 103, 104, 160.
trial of pirates for seizure of, 146, 156, 157, 158, 531.

Wellington valley

convicts employed at, 305.
fixed salary for commandant at, 251.
government reserves at, to be thrown open, 228.
reduction of agricultural establishment at, 661.
return of government live stock at, 662.
troops stationed at, 276.

Wemyss, William (dep. com.-genl.)

magistrate, 59.
remittance by, to colonial agent, 88.

Wentworth, D'Arcy

death of, 458.
magistrate, 59.

Wentworth, William Charles

abuse of governor by, in open court, 547, 548, 638, 650, 707, 709.
address of, in case of Broadbear, R., and wife against Macarthur, Jas., and *ors.*, 325 *et seq.*, 348 *et seq.*
ambitions of, 81.
approval of speech of, by turf club, 641.
arrest of, by sentry, 728, 729, 730 *et seq.*
association of Foster, W., with, 707, 711.
book written by, 82.
chair taken by, at dinner of turf club, 642.
clients of, 81.

Wentworth, William Charles

counsel for Broadbear, R., and wife against magistrates, 321.
espousal of emancipist cause by, 97.
health of, proposed by Douglass, H. G., 647, 653, 707, 709.
impeachment of governor threatened by, 647, 707, 710.
imputations made by, against Scott, T. H., 321, 322.
incapacity of crown law officers to oppose, 82.
information supplied to, by Stephen, J., 771.
letter from, to Darling, Governor, 729.
methods of, 82, 694.
power of, in court, 694.
presence of, at meeting called by Mackaness, J., 785.
prosecution by, of Macleay, A., for libel, 692 *et seq.*
refusal of emancipists to drink health of, 785.
report by Ovens, T., on arrest of, 730 *et seq.*
speech by, at dinner of turf club, 642, 645.
support—
of Mackaness, J., by, 98, 191, 638.
given by, to Cookney, G., 525, 527.
toast of, proposed at emancipist dinner, 785.
voting by, on resolutions at turf club, 643.

Wesleyan missionary society

annual payments to Wesleyan missionaries, 777.
application from, for land at Bateman's bay, 128.
land grant to, 15.

West Australia

See "King George's sound," "Swan river."

Western port

advantages of, as a port, 667.
advocacy of settlement at, by secretary of state, 734.
application from Phillips, M., for land at, 132, 133.
charter of vessel to convey stores to, 302.
convicts employed at, 303, 305.
disadvantages of, for settlement, 240.
establishment at, to be withdrawn, 667.
examination of, proposed by Hovell, W. H., 74.
expenditure on settlement at, 544.
expense of conveyance of stores to, 145.
instructions to Darling, R., *re* abandonment of, 450.

Western port

report—

- by Hovell, W. H., on, 240.
- on foundation of settlement at, 73, 74.
- troops stationed at, 276, 303.
- visit of corvette *L'Istrolabe* to, 304.

Wetherall, F. A. (captain, R.N.)

- adverse report by, on Western port, 74.
- captain, H.M. ship *Fly*, 161.
- compensation proposed by, for recapture of brig *Wellington*, 161.
- letter from, to Macleay, A., 161.
- loss of promotion anticipated by, 74, 85, 86.
- promotion of, in navy, 451.
- testimony in favour of, 74.

White, G. B. (assist. surveyor)

- salary and allowances of, 666.

White, Henry

- salary of, as clerk in survey department, 667.

Wilford, — (lieut., staff corps)

- appointment of, as surveyor of roads and bridges, 268, 614.

Wilkinson, Reverend F.

- land held by, 130.
- particulars relating to, 778.

Wilton, Reverend C. F. N.

- arrival of, 548.
- ill-health of wife of, 549.
- particulars relating to, 778.
- salary of, 774.

Windsor

- troops stationed at, 276.

Wollstonecraft, Edward

- chairman of chamber of commerce, 249.
- confirmation of land grant to, 427.
- influence of press criticism on, 191, 249.
- magistrate, 59.
- member of board of inquiry on naval department, 249.

Wood, — (surgeon)

- death of, at Raffles bay, 794.

Wood, John (lieutenant, R.N.)

- recommendation of, as naval settler, 669.

Woodlark, ship

- despatch *per*, 426, 437, 452, 455, 457, 460, 461, 462, 464, 465, 476, 477.

Woods, W. W. (lieut., 3rd regt.)

- approval of advance to widow of, 62.

Wool

- manufacture of clothing by convicts, 144, 662 *et seq.*

Wright, Samuel (capt., 3rd regt.)

- adverse report by, on Western port, 74.
- magistrate, 59.

Writers

- salaries and land grants proposed for, 569.

York and Albany, H.R.H. duke of

- announcement of death of, 13.

Young and Thornbull

- letter from, to Goderich, Viscount, 456.

Zoologist

- appointment of, 210.

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